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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-89-012]

Tobacco Inspection; Flue-Cured and Burley Tobacco; Importation Prohibitions; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: USDA is correcting the authority line for the final rule (TB-89-001), Tobacco Inspection; Flue-Cured and Burley Tobacco; Importation Prohibitions; that appeared in the **Federal Register** of Friday, June 9, 1989 (54 FR 24661-24664). This correction will make clear that the authority for the subpart remains unchanged. In addition, in § 29.427, the maximum concentration of residue for hexachlorobenzene (HCB) is corrected to read 0.1 parts per million (ppm).

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 502, Annex Building, P.O. Box 96456, Washington, DC 20090-6456, telephone: (202) 447-2567.

SUPPLEMENTARY INFORMATION: On Page 24663 of the **Federal Register** (Document No. 89-13739) appearing in the issue of Friday, June 9, 1989, paragraph 1 under Part 29—[Amended] should read as follows:

1. The authority citation for Part 29, Subpart B, continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

§ 29.427 [Corrected]

2. Section 29.427, Pesticide residue standards, is corrected by removing "1.0" as the maximum concentration of residue for hexachlorobenzene (HCB) and inserting "0.1".

Dated: June 26, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-15562 Filed 6-30-89; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 29

[TB-89-004]

RIN-0581-AA19

Tobacco Fees and Charges for Mandatory Inspection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Effective July 1, 1989, the Secretary of Agriculture is revising the fees and charges assessed by the Department for the mandatory inspection and certification of quota tobacco sold at designated tobacco auction markets. The fees collected would cover the Department's costs for performing this service. This final rule does not affect the fee for permissive or voluntary inspection of tobacco, or the fee for inspecting and testing imported tobacco. The present fee of $.0055 per pound is no longer sufficient to cover the increased cost of this activity.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502, Annex Bulding, P.O. Box 96456, Washington, DC 20090-6456.

SUPPLEMENTARY INFORMATION: Notice was given (54 FR 18905, Wednesday, May 3, 1989) that the Department proposed to amend the regulations governing the fees and charges for the mandatory inspection and certification of producer tobacco sold at designated auction markets throughout the tobacco producing areas. Interested parties were given an opportunity to comment on the proposed rule. No comments were received.

The Department hereby adopts the regulations appearing in the proposed rule which increases the fees and charges assessed by the Department for providing inspection and certification of quota tobacco, the establishment of standards, and other services. The new fee will cover the increased cost of operating the program, including administrative and supervisory costs. Authority for these regulations is contained in the Tobacco Inspection Act (7 U.S.C. 511-511q).

The current fee of $.0055 per pound has been in effect since July 1, 1982, as published in the **Federal Register** (47 FR 51722) on June 23, 1982.

The Department conducts a yearly review of the financial status of this program to determine whether the fee is sufficient. Receipts for the 1988-89 marketing season were approximately $7,875,000. Anticipated expenses for that period are approximately $9,252,000. For the past three seasons, the increased costs of the tobacco inspection program forced the Department to draw upon funds in that program's reserve account. The major factors causing the need for additional funds are increases in Government salaries, including a special salary rate for tobacco graders which was effective October 30, 1988, and increases in travel allowances and overall administrative costs since 1982. An analysis of data available to the Department indicates that a fee of $.0067 per pound would cover expenses and maintain a reserve that would meet any reasonable contingency. Information on program income and expenses was presented to the National Advisory Committee for Tobacco Inspection Services at its meeting on March 7, 1989, in Washington, DC. The National Advisory Committee, made up of 14 representatives from tobacco producer interested groups, was established under the Tobacco Inspection Act to advise the Secretary of Agriculture on the fees to be assessed, level of inspection service, and other related matters. The Committee adopted a motion, by a vote of eleven in favor and two opposed, to recommend to the Secretary an increase in the fee of $.0070 per pound. However, based on a recalculation of pounds under quota for the coming marketing season, a fee of $.0067 per pound was proposed.

The marketing season for tobacco does not coincide with the Federal fiscal year. Therefore, the increased rate is being made effective on July 1, 1989, so as to treat all types of tobacco on an equal basis.

This rule has been reviewed under USDA procedures established to implement Executive Order 12291 and

Departmental Regulation 1512–1 and has been determined to be a "nonmajor rule" because it does not meet any of the criteria established for major rules under the Executive Order.

Additionally, in conformance with the provisions of Pub. L. 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business. Most of the firms which would be affected by this rule are small businesses.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This final rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this final rule would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and would not alter the market share or competitive positions of small entities relative to the large entities and would in no way affect normal competition in the marketplace. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

In addition, good cause has been found to make this rule effective less than 30 days after publication because it is necessary that the new fee be effective at the beginning of the new marketing season which begins in mid-July.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Tobacco.

Accordingly, the Department hereby amends the regulations under the Tobacco Inspection Act contained in 7 CFR Part 29 as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority statement for Subpart B continues to read as follows:

Authority: U.S.C. 511m and 511r.

§ 29.123 [Amended]

2. In § 29.123(a) Mandatory inspection, change $.0055 per pound to $.0067 per pound.

Dated: June 27, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89–15597 Filed 6–30–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 916 and 917

[Docket No. FV–89–015]

Nectarines and Fresh Pears, Plums and Peaches Grown in California; Amendment of Container Regulations; Amendment of Size and Maturity Regulations; and Changes to the Maturity Variance Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the container requirements and size and maturity requirements for fresh nectarines, plums and peaches grown in California. The rule relaxes container requirements to allow handlers to ship individual consumer packages not in master containers, specifies labeling requirements for such packages, and defines what constitutes consumer packages. This rule also changes the coverage of size requirements by adding several new varieties of nectarines, plums and peaches to variety-specific regulations, and deletes other varieties from regulations. Varieties removed from variety-specific regulations are subject to less restrictive size requirements for non-listed varieties. Additionally, the rule changes maturity requirements for some varieties for which maturity guides are currently specified, adds maturity guides for several new varieties and deletes guides for several varieties which are no longer shipped. Finally, this final rule authorizes a minor procedural change to hasten the variance procedures for these fruits. The nectarine and peach actions were unanimously recommended by the Nectarine Administrative and the Peach Commodity Committees. All plum actions but one, a maturity guide change for fresh prunes, were recommended unanimously by the Plum Commodity Committee. The rules are designed to improve the maturity variance procedures and promote the marketing of each of the commodities.

EFFECTIVE DATE: July 3, 1989.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, AMS, F&V, Room 2532, P.O. Box 96456, Washington DC 20090–6456; telephone (202) 475–3919.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937 (the Act) [7 U.S.C. 601–674] as amended, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The rule is issued under the marketing agreements, as amended, and Marketing Orders 916 and 917, as amended, [7 CFR Parts 916 and 917], regulating the handling of nectarines, pears, peaches and plums grown in California. The agreements and orders are effective under the Act. Shipments of these fruits are regulated by container and pack under Nectarine Regulations 8 [7 CFR 916.350], Peach Regulation 8 [7 CFR 917.422], and Plum Regulation 17 [7 CFR 917.454], as amended on June 9, 1989 [54 FR 24668]. Shipments of nectarines, peaches and plums are regulated by grade and size under nectarine Regulation 14 [7 CFR 916.356] as amended and published in the **Federal Register** on March 27, 1989, [54 FR 12423], and further amended on April 25, 1989 [54 FR 18095]; Peach Regulation 14 [7 CFR Part 917.459] as amended and published in the **Federal Register** on March 27, 1989, [54 FR 12431]; and Plum Regulation [7 CFR Part 917.460] as amended and published in the **Federal Register** on March 27, 1989 [54 FR 12427].

Notice of this action was published as a proposed rule in the **Federal Register** [54 FR 12419] on March 27, 1989. Comments were invited to be submitted by April 27, 1989. Comments were received from R. William Tracy, Deputy Director, Department of Food and Agriculture of the State of California, and from Jonathan Field, manager of the nectarine, peach and plum marketing

order committees. The comments concern the maturity variance procedures and are addressed in that section of this document. No other comments were received.

It is estimated that approximately 500 handlers are subject to regulation under the marketing orders for California nectarines, peaches and plums during the course of the current season. In addition, there are about 2,000 growers of these fruits in California. The Small Business Administration (SBA) defines agricultural service firms [13 CFR 121.2], which would include handlers, as those whose gross annual receipts are less than $3,500,000. Small agricultural producers have been defined by the SBA as those having average annual gross revenues for the last three years of less than $500,000. The majority of these handlers and growers may be classified as small entities.

Inspected shipments, in packages, of California nectarines, plums and peaches for the 1988 season totaled 17,584,100, 15,158,400 and 14,333,500, respectively, and they were primarily marketed in the fresh market.

Because these regulations do not change substantially from season to season, they have been issued on a continuing basis subject to amendment, modification, or suspension as may be recommended by the applicable committee and approved by the Secretary.

The Nectarine Administrative Committee, Peach Commodity Committee and the Plum Commodity Committee (hereinafter referred to as the nectarine committee, peach committee and plum committee, and cumulatively as the committees) recommended relaxing container requirements, amending container labeling and requirements, amending size and maturity requirements, and making minor changes in their maturity variance procedures. This final rule is based upon all three committees' recommendations, on information submitted by these committees, the comments received, and on other available information. The changes reflect crop and market conditions experienced in 1988 and expected in 1989.

Container Requirements

The committees recommended relaxing the container and pack requirements for their respective fruits (nectarines, § 916.350; peaches, § 917.442; and plums, § 917.454) to allow handlers to ship individual consumer packages which are not in master containers. The current container and pack regulations do not provide for the shipment of fruit in individual consumer packages. Some handlers indicated that such packages would better meet the needs of certain speciality markets such as restaurants and gift pack distributors who prefer smaller quantities of fruit. The committees believe that the handlers should be allowed to take advantage of these marketing opportunities and should not be restricted to shipping small packages only when enclosed in larger master containers. The relaxation would provide more marketing flexibility for each of the industries by allowing shipments of consumer containers without placing them in master containers. Thus, the committees contend that handlers would better be able to meet the needs of the marketplace.

This recommendation is adopted, and paragraph (a)(1) of the nectarine and peach container and pack regulations are changed to extend the exemptions from standard pack requirements to include individual consumer packages not in master containers. Similarly, paragraph (a)(1) of the plum container and pack regulations is changed to exempt individual consumer packages not packed in master containers from pack requirements specified in paragraphs (a)(1) (i) through (iii) of § 917.454. The exemption is extended to consumer packages not in master containers by removing the word "therein" from the terms and conditions specified in paragraph (a)(1) of each regulation.

The committees also recommended including a definition of the term "individual consumer package" as a package containing 15 pounds or less net weight of fruit. The committees indicated that a definition was necessary to differentiate consumer packages from other packages or containers currently authorized. This recommendation is adopted, and these definitions are included in paragraph (b) of § 916.350 for nectarines and § 917.442 for peaches, and paragraph (d) of § 917.454 for plums.

This rule also establishes container labeling requirements for consumer packages to be consistent with existing labeling requirements for master containers and to adequately identify the contents of the packages. Paragraphs (a)(8) of § 916.350 for nectarines and § 917.454 for plums, and paragraph (a)(9) of § 917.442 for peaches, specify that each individual consumer package of nectarines, plums and peaches, respectively, shall bear the name, address of the shipper, and the net weight of the fruit in the package. Each of these paragraphs is revised to include the name of the fruit variety in the package, if known. If the variety is not known, the words "Unknown Variety" will be printed on the side of each individual consumer package. Such varietal information is needed to help the committees' staff and inspection service verify compliance and aid marketing efforts at the point of purchase. Most size and maturity requirements for these fruits vary between varieties. Thus the name of the variety, when known, will help facilitate inspection and marketing efforts. The address of the shipper will also include the shipper's zip code, as it is included on master containers.

In addition, this rule requires that the number of pieces of fruit contained in the individual consumer packages not packed in master containers be specified on the package and that the package be marked with the size of the fruit. Size markings would be in accordance with paragraph (a)(3) of § 916.350 (nectarines), paragraph (a)(3) of § 917.442 (peaches) and paragraph (a)(4) of § 917.454 (plums). These requirements were not included in the proposed rule. However, upon further analysis of the committees' recommendations, it is our understanding that the intent of the committees in recommending container labeling requirements for consumer packages was to also require such markings.

It is common industry practice to include this type of information on all packages marketed. Handlers include this information on the packages because there are price differences for the various sizes and number of fruit included in the packages. Moreover, size descriptions of the contents of larger packages are already required under the container and pack requirements. Hence, requiring this information to be included on consumer sized packages merely reflects current industry practice. Therefore, this requirement would not place and additional burden on handlers and would be beneficial to consumers in determining the size and quantity of the fruit in the packages.

In addition, the plum committee recommended that container and pack regulations for plums in paragraphs (a)(2) and (a)(5) of § 917.454, as amended at 54 FR 24667, be revised to be consistent with the recommended container requirement changes. Paragraph (a)(2) of § 917.454 is amended by adding the words ", or individual consumer package," after the words "individual pack or container" to further clarify that individual consumer containers are affected by the

requirements in that paragraph. Additionally, paragraph (a)(5) is amended by deleting the words "in master containers" from the paragraph after the words "consumer packages." Thus, exemptions from the 28 pounds, or for the 1989/90 season 24 pounds, net weight requirement apply to individual consumer packages of plums as well as bulk bins and master containers of consumer packages.

It is the Department's view that the changes allowing handlers to ship consumer packages of 15 pounds net weight or less, that are not in master containers, will provide handlers more marketing flexibility and permit the handlers to meet the needs of the marketplace more effectively. This change is expected to be beneficial to the nectarine, peach and plum industries in developing new market outlets for their fruits, and is not expected to result in additional marketing costs.

Size Requirements

This rule alters the size requirements for nectarines, peaches and plums by adding several new varieties now produced in commercially significant quantities to variety-specific (named variety) size requirements, and by deleting from variety-specific size requirements certain varieties not longer produced in significant quantities. The variety-specific size requirements and size requirements for non-listed varieties are not changed for the 1989 season.

Variety-specific size requirements are implemented when one variety is produced in commercially significant quantities. Such quantity is considered by the three committees to be total shipments of a variety exceeding 10,000 packages during a season. In making this volume determination for plums, the packages are equivalent to 28 pounds. Thus, when individual consumer packages of plums weighing 15 pounds or less net weight are shipped, the smaller packages would be combined into 28-pound units (or packages). For instance, two 14-pound packages of plums would be counted as one 28-pound package, and four 7-pound packages of plums would be counted as one 28-pound package. For nectarines and peaches the equivalent weight would be based on 22-pound packages. Thus, for instance, two 11-pound individual consumer packages of either nectarines or peaches would be counted as one 22-pound package of the fruit.

Nectarine, peach and plum varieties that exceeded 10,000 shipped packages for the first time during the 1988 season are listed in the regulations below. These varieties are regulated under the variety-specific size requirements for each fruit.

When a variety is no longer produced in significant quantities it is removed from the variety-specific size regulation list. Shipments of nectarine, peach and plum varieties that fall below 5,000 packages during a season are removed from variety-specific size regulations for their respective fruits. The varieties listed in the regulations below are removed from their respective variety-specific size requirement lsits for the 1989 season. Individually these varieties were not produced in significant quantities during the 1988 season to warrant variety specific size coverage. However, these varieties are now subject to minimum size requirements for non-listed varieties because, in combination with other varieties of the same fruit, they are produced in significant quanities to warrant some size coverage. The size requirements established for non-listed varieties are less restrictive than those established for listed varieties. The 10,000 and 5,000 package quantities used in making these determinations have been used in prior seasons.

For nectarines, the variety-specific size requirements and non-listed size requirements are specified in paragraphs (a)(2) through (a)(8) of § 916.356. To implement the nectarine committee's unanimous recommendation for this action, paragraph (a)(5) of § 916.356 is amended to establish variety-specific size requirements for August Red, Red Lion, Sparkling June and 8OP–1135 nectarines. These varieties were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1988 season.

The nectarine committee also unanimously recommended that four varieties be deleted from variety-specific size requirements because their production was less than 5,000 packages during the 1988 season. This rule removes Hi-Red, Red June, Spring Grand and Clinton-Strawberry from the variety-specific list and makes them subject to one of the non-listed variety size requirements specified in paragraphs (a)(6) through (a)(8) of § 916.356.

For peaches, the variety-specific size requirements and non-listed size requirements are specified in paragraphs (a)(2) through (a)(5) and in paragraphs (b) and (c) of § 917.459.

The peach committee unanimously recommended that variety-specific size requirements be established for eight peach varieties. This rule amends § 917.459 by making the following changes: The Flordaprince variety is added to paragraph (a)(2); Kings Red and Queencrest varieties are added to paragraph (a)(4); and Amber Crest, September Sun, Summer Lady and Windsor are added to paragraph (a)(5).

This rule also amends § 917.459 by adding new paragraph (a)(6) for the Goldcrest variety, which provides two size-requirement options. New sub-paragraph (a)(6)(i) requires that handlers not ship more than 88 Goldcrest peaches in No. 22D standard lug boxes (in accordance with standard pack requirements). Sub-paragraph (a)(6)(ii), requires that Goldcrest peaches packed in any container other than as specified in sub-paragraph (a)(6)(i), be of a size that a 16-pound sample, representative of the peaches in the package or container, contain not more than 83 Goldcrest peaches. This action is based on Goldcrest data collected over the last three shipping seasons.

The peach committee also unanimously recommended that three varieties be deleted from variety-specific size requirements because the production of these varieties was less than 5,000 packages during the 1988 season. This rule removes Early Coronet, May Lady and Press Suncrest varieties from the variety-specific list and makes them subject to the non-listed variety size requirements as specified in paragraphs (b) and (c) of § 917.459.

For plums, the variety-specific size requirements and non-listed size requirements are specified in paragraphs (b) and (c) of § 917.460. To implement the plum committee's unanimous recommendation for this action, paragraph (b) of § 917.460 is amended to establish variety-specific size requirements for Ambra, Autumn Giant, Black Ace, Black Gold, Black Torch, King James, May Rosa, Royal Diamond and Royal Garnet plum varieties. These varieties were produced in commercially significant quantities (more than 10,000 packages) for the first time during the 1988 season.

The plum committee also unanimously recommended that the Rose Ann variety be deleted from variety-specific size requirements for plums because the production of that variety was less than 5,000 packages during the 1988 season. This action amends paragraph (b) of § 917.460 by removing the Rose Ann variety from the variety-specific size requirements for plums.

The addition of several new varieties of nectarines, peaches and plums to the variety-specific (named variety) size requirements, and the removal of certain other varieties from those requirements,

are not detrimental to small entities. These changes are expected to help the respective commodity industries provide the sizes of fruits that are desired in fresh markets. Such actions are beneficial in maintaining current markets and developing new ones.

Maturity Requirements

The maturity requirements established under these marketing orders are intended to provide fruits that better meet customer preferences. Over the years, consumers have indicated that they prefer fruit that is sweet and flavorful. Based upon recommendations of the three fruit committees, this rule assigns maturity guides to nectarine, peach and plum varieties for which guides currently are not specified. These guides are used in ascertaining compliance with the "well-matured" standard currently in effect. The maturity guides assigned for these fruit varieties are based on nectarine, peach and plum committee recommendations and on Federal-State Inspection Service personnel observations of varietal characteristics over several seasons. The rule also deletes guides for fruit varieties which are no longer shipped. These varieties are removed from the 1989 season and until they are again produced and shipped commercially.

With regard to nectarines, this final rule provides for (1) the addition of color chip maturity guides to Table 1 in paragraph (a) of § 916.356 for Alshir Red, Early Diamond, May Diamond, May Fire, Pacific Star, Springtop, Star Bright, Super Star and 181–119/Sierra Star varieties because these new varieties are now being produced and shipped commercially, and (2) removal of nectarine maturity guides in Table 1 for the Ambrosia, Apkarian, Richards Grand, Zee Gold and #91 varieties because these varieties are no longer being produced and shipped.

With regard to peaches, this final rule provides for the addition of color chip maturity guides to Table 1 in paragraph (a) of § 917.459 for the Golden Crest, Mary Ann, Prime Crest, Queen Crest and Summer Lady varieties because these new varieties are now being produced and shipped commercially. In addition, the Department approves, based on a peach committee recommendation, the removal of peach maturity guides in Table 1 for the Delp, Early Elberta, Fiesta, Halloween, Kim Elberta, Royal Gold and JJK–1 varieties because these varieties are no longer being produced and shipped.

With regard to plums, this final rule provides for the addition of maturity assignments for the Belmont Pride, Black Diamond, Blue Knight, Prima Black and Sweet Rosa varieties to Table 1 in paragraph (a) of § 917.460. This final rule also provides for the removal of Ashag, August Rosa, Fresno Rosa, Premier and Prima Rosa varieties from Table 1 because these varieties are no longer being produced and shipped.

Also with regard to plums, several changes in the maturity guides in Table 1 in paragraph (a) of § 917.460 were recommended by the plum committee for the 1989 season as more accurate measures of well-maturity, and these changes are contained in this final rule. The heading "Fresh Prune/Plums" is changed to "Fresh Prunes" to lessen the chances of confusion in the industry. The maturity guide for the Angeleno variety is amended by changing the surface color requirement from purple to dark red. The maturity guide for the Freedom variety is changed from "three fourths of the surface dark red with the remainder full light greenish yellow color. C Color" to "not less than 90 percent of the surface shall be dark red color or light yellow. H Color." The "spring" requirement for the Royal Diamond variety is removed and a "smooth shoulders" requirement is added. The background color requirement for the Royal Garnet and Royal Red varieties is removed so that the maturity guide for Royal Garnet is "full red color" and the maturity guide for Royal Red is "full distinct red color." Also, the maturity guidelines for fresh prune/plums is changed to require that 50 percent of surface be mottled red color, with the balance of the surface light green color. In addition, this rule requires that, for all varieties of fresh prunes, a random sampling is required to average 19 percent soluble solids. The exception to this requirement is the Moyer variety which must average 16 percent soluble solids. The requirement that French prunes have 18 percent soluble solids is also removed by this action. The committee indicated that this requirement is not necessary to foster French prune shipments which are well-matured. Soluble solid percentages are highly correlated with the percentage of sweetness of the fruit juices.

Currently, the maturity guide for the Laroda variety requires that representative samples of the fruit be "full surface dark red or dark red color at blossom end and remainder of surface full light yellow color with a surface tolerance of 5 percent for fruit not meeting the yellow surface requirement. F Color." This action changes this requirement to allow a leaf spotting tolerance of a 5/8 inch diameter yellow surface area (rather than five percent). This change to a more easily identifiable surface area will enable a more accurate evaluation of individual fruit by inspection service personnel.

The Department has determined that these actions assigning maturity guides to new varieties of nectarines, plums and peaches, the removal from maturity guides of those varieties no longer shipped, and the changes in the guides currently listed for some plum varieties, will be beneficial in improving the quality of the fruits marketed. The Department also believes these size and maturity changes will not be detrimental to small entities in the three industries. These changes are expected to help the California tree fruit industry maintain its good quality image.

Maturity Variance Procedure Changes

In recommending proposed rule changes for the 1989 season, the committees requested that an AMS representative (field officer) prepare reports of maturity subcommittee and appeal committee decisions and notify the requester of appeal committee decisions. Such action would necessitate attendance by an AMS field officer at all maturity variance meetings for the three commodities. In addition, the committees recommended that the field officer provide the shipping point inspectors with copies of appeal committee decisions. These recommendations are similar to those previously recommended by the committees, which were denied by the Department in the final rules issued for the 1988 season (cited above). Denial was based upon the Department's belief that the committees and their subcommittees are responsible for conveying decisions to their respective industries. The committee proposals were also denied because involvement by an AMS representative would constitute an extra step in an already extremely time-sensitive procedure. The proposed rule for the 1989 regulations restated the Department's position (54 FR 14083). Comments on these issues were received from Mr. Jonathan Field, manager of the nectarine, peach and plum committees, and also from Mr. R. William Tracy, Deputy Director, Department of Food and Agriculture of the State of California.

Mr. Field and Mr. Tracy contended that AMS representation throughout the maturity subcommittee process would constitute a neutral third-party in variance deliberations and ensure that the variance procedures were administered properly. The success of the variance process depends upon the careful analysis of fruit condition and maturity. In making a variance decision,

maturity guides and other maturity indicators must be properly interpreted.

The Federal or Federal-State Inspection Service inspectors already represent a neutral third party in the variance process just as they do with respect to the entire inspection process. Inspection officials are involved in the variance process from the very beginning, and attend maturity subcommittee meetings to present information on fruit condition. However, to clarify the maturity variance procedures in this regard, paragraph (a)(1)(iv) of § 916.356 for nectarines is modified to specify that the inspection official involved in the process should participate in all maturity subcommittee meetings until the deliberations are completed and the decision is made. For the same reason, paragraph (a)(1)(iv) of § 917.459 for peaches and paragraph (a)(3)(iii) of § 917.460 for plums is modified similarly.

Department oversight of marketing order programs is extensive and includes review and evaluation of all committee and subcommittee actions. Department oversight includes field officer attendance at all scheduled committee and many subcommittee meetings, frequent communication between the committees and the AMS field office personnel and review of committee operations.

Therefore, with regard to Department oversight of the committees and maturity subcommittees, it is determined that the maturity determination process is subject to appropriate oversight, as are other marketing order activities. In our view, the maturity determination process has provided, over the years, fair and equitable treatment of producers and handlers, and the variance process has worked well during this time.

Therefore, commenters' recommendations that AMS field representatives attend all variance or appeal committee meetings is hereby denied. In addition, the Department's denial of the committee's request that the AMS field officer prepare reports and disseminate variance decisions is reaffirmed.

Mr. Tracy's comment also recommended that the rule be clarified to specify the committees' authority to grant variances on an orchard by orchard basis. This matter was previously discussed at 53 FR 19223 and 53 FR 19231. There it was noted that a variance for a particular variety would not automatically apply to all growers and handlers of the variety throughout California. It is the view of the Department that the interim final rules at 53 FR 19231 (nectarines), 19223 (plums), and 19238 (peaches), and the final rules at 54 FR 12422 (nectarines), 12426 (plums), and 12430 (peaches), clearly contemplate that variances may be granted for any variety of California nectarines, peaches, and plums on an orchard by orchard basis if, for instance, changes in weather or growing conditions necessitate a more appropriate measure of well-maturity. Therefore, the comment is denied and no change is adopted herein.

The three committees also recommended, that the officer-in-charge of the local Federal-State Inspection Service Office be allowed to designate someone other than that officer to represent the inspection service during on-site examination of the fruit for which a variance has been requested. Currently the variance procedures for nectarines [§ 916.356(a) (1) (ii) and (iii)], peaches [§ 917.459(a)(1) (ii) and (iii)], and plums [§ 917.460(a)(3) (i) and (ii)] require the office-in-charge to accompany the committee fieldman to make such examinations. This final rule also provides for this change in the regulations. This change is intended to hasten decisions and thus improve the maturity variance process. This change should not result in additional costs and should be beneficial to the industries. Therefore, the regulations are amended to provide that the officer-in-charge or a designee of the officer-in-charge shall accompany the committee fieldman.

Based on the above, the Administrator of the AMS has determined that the changes above will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the committees' recommendations, the comments received, and other information, it is found that this action, as hereinafter set forth, will tend to effectuate the delcared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The requirements set forth below are the similar to those published as a proposed rule on March 27, 1989, which has been presented to the industry with no negative response, (2) the shipping season has already begun and the rules issued herein should be applied to the industry for as much of the season as possible, and (3) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Parts 916 and 917

Marketing agreements and orders, California, Nectarines, Peaches, Plums.

For the reasons set forth in the preamble, it is proposed that 7 CFR Parts 916 and 917 be amended as follows:

Note: [The following sections will appear in the Annual publication of the *Code of Federal Regulations*]

1. The authority citation for 7 CFR Parts 916 and 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. In § 916.350, paragraph (a)(1) is amended by removing the word "therein," paragraph (a)(8) is revised, and paragraph (b) is amended by adding a definition at the end of that paragraph for "individual consumer packages" to read as follows:

§ 916.350 Nectarine Regulation 8.

(a) * * *

* * * * *

(8) Each individual consumer package shall bear the name and address, including the zip code, of the shipper and the net weight. When a consumer package is not in a master container, it must also bear the number of nectarines contained in the package, the name of the variety, if known, or if the variety is not known, the words "Unknown Variety," and be marked as specified in paragraph (a)(3) of this section.

(b) * * * "Individual consumer packages" means packages holding 15 pounds or less net weight of nectarines.

* * * * *

§ 916.356 [Amended]

3. Table 1 of § 916.356(a) is amended by adding in alphabetical order the following nectarine varieties to Column A and maturity guides to Column B:

Alshir Red	L, except not less than an aggregate area of 95 percent of the fruit surface shall meet the color standard established for the variety.
Early Diamond	J
May Diamond	I
May Fire	H
Pacific Star	G
Springtop	B
Star Bright	G
Super Star	G
181–119/Sierra Star.	G

4. Table 1 of § 916.356(a) is amended by removing the following nectarine

varieties from Column A and their maturity guides from Column B: Ambrosia, Apkarian, Richards Grand, Zee Gold, #91.

5. Paragraph (a)(1)(iii) of § 916.356 is amended by adding the words ", or a designee of the officer-in-charge shall," after the words "officer-in-charge."

6. Section 916.356 is amended by adding a new sentence after sentence five in paragraph (a)(1)(iv) to read as follows:

§ 916.356 Nectarine Regulation 14.

(a) * * *

(1) * * *

(iv) * * * The inspection official shall participate in the subcommittee meeting until the deliberations are completed and the decision is reached. * * *

* * * * * *

7. Paragraph (a)(4) of § 916.356 is amended by removing the Red June and Spring Grand nectarine varieties.

8. Paragraph (a)(5) of § 916.356 is amended by adding in alphabetical order the nectarine varieties August Red, Red Lion, Sparkling June and 80P–1135 and by removing the nectarine varieties Clinton Strawberry and Hi Red.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

9. In § 917.442, paragraph (a)(1) is amended by removing the word "therein," paragraph (a)(9) is revised, and paragraph (b) is amended by adding a definition at the end of that paragraph for "individual consumer packages" to read as follows:

§ 917.442 Peach Regulation 8.

(a) * * *

(9) Each individual consumer package shall bear the name and address, including the zip code, of the shipper and the net weight. When a consumer package is not in a master container, it must also bear the number of peaches contained in the package, the name of the variety, if known, or if the variety is not known, the words "Unknown Variety," and be marked as specified paragraph (a)(3) of this section.

(b) * * * "Individual consumer packages" means packages holding 15 pounds or less net weight of peaches.

10. In § 917.454, paragraph (a)(1) is amended by removing the word "therein," paragraphs (a)(2), (a)(5), and (a)(8) are revised, and paragraph (d) is amended by adding a definition at the end of that paragraph for "individual consumer packages" to read as follows:

§ 917.454 Plum Regulation 17.

(a) * * *

(2) The diameter of the smallest and largest plums in any individual pack or container, or individual consumer package, shall not vary more than one-fourth (¼) inch, except that plums which are placed in volume-fill or tight-fill type containers and have a diameter of two and one-fourth (2¼) inches or larger shall not vary more than three-eights (⅜) inch. A total of not more than five (5) percent, by count, of the plums in any package or container may fail to meet this requirement.

* * * * *

(5) Each package or container of loose-filled or tight-filled plums, other than bulk bin containers, master containers of consumer packages, and individual consumer packages in master containers shall bear on one outside end, in plain sight and in plain letters, the words "28 pounds net weight" or, for the 1989/90 marketing season, "24 pounds net weight", whichever is appropriate.

* * * * *

(8) Each individual consumer package shall bear the name and address, including the zip code, of the shipper and the net weight. When a consumer package is not in a master container, it must also bear the number of plums contained in the package, the name of the variety, if known, or if the variety is not known, the words "Unknown Variety;" and be marked as specified paragraph (a)(4) of this section.

(d) * * * "Individual consumer packages" means packages holding 15 pounds or less net weight of plums.

11. Paragraph (a)(1)(iii) of § 917.459 is amended by adding the words ", or a designee of the officer-in-charge shall," after the words "officer-in-charge."

12. Section 917.459 is amended by adding a new sentence after sentence five in paragraph (a)(1)(iv) to read as follows:

§ 917.459 Peach Regulation 14.

(a) * * *

(1) * * *

(iv) * * * The inspection official shall participate in the subcommittee meeting until the deliberations are completed and the decision is reached. * * *

* * * * * *

13. The introductory text of paragraph (a)(2) of § 917.459 is amended by adding the words "or Flordaprince" after the word "Desertgold".

14. Paragraph (a)(4) of § 917.459 is amended by adding in alphabetical order, the Kings Red and Queencrest varieties of peaches and by removing the Early Coronet and May Lady varieties of peaches.

15. Paragraph (a)(5) of § 917.459 is amended by adding in alphabetical order, the Amber Crest, September Sun, Summer Lady, and Windsor varieties of peaches, by removing the word "or" before the variety "Toreador" and placing it before the variety "Windsor" and by removing the Preuss Suncrest variety.

16. New paragraph (a)(6) is added to § 917.459 before Table 1 to read as follows:

§ 917.459 Peach Regulation 14.

(a) * * *

(6) Any package or container of Goldcrest variety peaches unless:

(i) Such peaches when packed in molded forms (tray pack) in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 88 peaches in the box; or

(ii) Such peaches in any container when packed other than as specified in paragraph (a)(6)(i) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 83 peaches.

* * * * *

17. Table 1 of § 917.459(a) is amended by adding in alphabetical order the following varieties of peaches to Column A and maturity guides to Column B:

Golden Crest	H
Mary Ann	G
Prime Crest	G
Queen Crest	G
Summer Lady	M

18. Table 1 of § 917.459(a) is amended by removing the following varieties of peaches from Column A and maturity guides from Column B:

Delp	C
Early Elberta	C
Fiesta	I
Halloween	I
JJK–1	G
Kim Alberta	C
Royal Gold	D

§ 917.460 [Amended]

19. Paragraph (a)(3)(ii) of § 917.460 is amended by adding words ", or a designee of the officer-in-charge shall," after the words "officer-in-charge."

20. Section 917.460 is amended by adding a new sentence after sentence five in paragraph (a)(3)(iii) to read as follows:

§ 917.460 Plum Regulation 19.

(a) * * *

(3) * * *

(iii) * * * The Inspection official shall participate in the subcommittee meeting

until the deliberations are completed and the decision is reached. * * *

* * * * *

21. Table I of § 917.460(a) is amended by removing the entry for Fresh Prune/Plums, adding an entry for Fresh Prunes, and revising the maturity requirements in Column B for the following varieties:

Angeleno	Full surface dark red or seventy-five percent dark red with remainder light greenish yellow. B Color.
Freedom	Not less than 90 percent of the surface shall be dark red color or light yellow. H Color.
Laroda	Full surface dark red or dark red color at blossom end and remainder of surface full light yellow color, with a leaf-spotting tolerance of 5/8 inch diameter.
Royal Diamond	Full surface red with smooth shoulders.
Royal Garnet	Full red color.
Royal Red	Full distinct red color.
Fresh Prunes	Fifty percent of surface mottled red color, balance of surface light green color. In addition, for all varieties of prunes shipped fresh, a random sample shall average 19 percent soluble solids, except for the Moyer variety, which shall average 16 percent soluble solids.

22. Table I of § 917.460(a) is amended by adding in alphabetical order the following varieties of plums to Column A and their maturity requirements to Column B:

Belmont Pride	Full dark red color.
Black Diamond	Full red color with spring.
Blue Knight	Full dark red color with spring.
Prima Black	Full dark red color with smooth shoulders.
Sweet Rosa	Seventy-five percent red color, remainder light greenish yellow color, or 50 percent light red flesh color. C color.

23. Table I of § 917.460(a) is amended by removing the following varieties of plums from Column A and their maturity requirements from Column B: Ashag, August Rosa, Fresno Rosa, Premier and Prima Rosa.

24. Table II of § 917.460(b) is amended by adding in alphabetical order the following varieties of plums to Column A and number of plums per sample to Column B:

Ambra	67
Autumn Giant	50
Black Ace	58
Black Gold	63
Black Torch	54
King James	50
May Rosa	71
Royal Diamond	56
Royal Garnet	69

25. Table II of § 917.460(b) is amended by removing the plum variety Rose Ann from Column A and the Rose Ann plums-per-sample number 60 from Column B.

Dated: June 27, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-15598 Filed 6-30-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 946

[Docket No. FV-89-030-FR]

Irish Potatoes Grown in Washington; Amendment To Eliminate Exemption for Yellow Fleshed Potatoes and Require Potatoes Exported in 50-Pound Cartons to be at Least U.S. No. 1 Grade

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule eliminates current provisions of the Washington potato handling regulation which exempt yellow fleshed potatoes from grade, size, pack, maturity and inspection requirements. It also requires potatoes exported in 50-pound cartons to be at least U.S. No. 1 grade. The objectives of these actions are to uphold the quality image of the Washington State potato industry in domestic markets and to provide a means by which foreign buyers may obtain a high quality product when purchasing Washington State potatoes.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 447-2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 113 and Marketing Order No. 946 (7 CFR Part 946), both as amended, regulating the handling of Irish potatoes grown in the State of Washington. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economc impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Washington State potatoes subject to regulation under the marketing order, and approximately 490 producers in the production area. The Small Business Administration (13 CFR 121.1) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural serviced firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Washington State potatoes may be classified as small entities.

In 1988, Washington State potato production totalled 63.25 million hundredweight (cwt.), and a record high yield of 550 cwt. per acre was attained. Approximately 87 percent of Washington potatoes produced is processed, and the remaining 13 percent is shipped to fresh market outlets. Fresh shipments of the 1988-89 Washington State potato crop to date are running slightly ahead of last season's level. As of May 31, 1989, fresh potato shipments amounted to 7,251,129 cwt. compared to 7,098,323 cwt. at the same time last year.

In 1988, total harvested potato acreage in Washington State amounted to 115,000 acres. About 88 percent of potato acreage was planted to long varieties, such as the Russet Burbank, Norgold Russet and Norkotah Russet. The remaining 12 percent was divided between round white and round red varieties, and this percentage has increased in recent years.

Since 1987, increases have been particularly significant for yellow fleshed varieties, which are generally classified as a round white type potato

due to their shape and skin color. The State of Washington Potato Committee (committee) projects that yellow fleshed potato planted acreage will exceed 1,000 acres this season.

The handling requirements for fresh Washington potatoes are specified in § 946.336 (53 FR 8143, March 17, 1988, as amended in 53 FR 21794, June 10, 1988). Current requirements for round potatoes specify that they be shipped under the following conditions. Round potatoes must grade at least U.S. No. 2 and must have a minimum diameter of 1⅞ inches (47.6 mm) except red skinned potatoes that are one inch in diameter may be shipped if they otherwise grade at least U.S. No. 1. Furthermore, the maturity requirement for round potatoes is that they shall not be more than "moderately skinned." Currently, the handling regulation exempts non-white fleshed potatoes and export shipments from these handling requirements.

This rule eliminates the current exemption for yellow fleshed potatoes and requires potatoes exported in 50-pound cartons to be at least U.S. No. 1 grade. These changes were unanimously recommended by the committee to become effective beginning with the 1989–90 season which commences July 1, 1989.

Prior to 1987, no distinction was made between white and non-white fleshed potatoes, and all were required to meet the grade, size, pack, maturity and inspection requirements of the handling regulation. Additionally, handlers were required to pay assessments on all fresh potatoes. In May 1987, an exemption from these handling requirements, published at 52 FR 15489, was provided for non-white fleshed potato varieties because very few potatoes of this type were being produced, and such potatoes were generally marketed in different outlets than white fleshed potatoes. Supplies of yellow fleshed potatoes in commercial fresh outlets are increasing, however, due to increasing production and consumer acceptance. Currently, yellow fleshed potatoes are being sold to grocery and restaurant outlets in which they compete with round, white fleshed potatoes.

Based on an approximate yield of 400 cwt. per acre and estimated planted acreage of 1,000 acres, Washington State production of yellow fleshed potatoes could be as high as 400,000 cwt. during the 1989 season. Because the production of yellow fleshed potatoes has increased, and these potatoes are now competing directly with white fleshed potatoes in commercial fresh markets, the committee unanimously recommended that yellow fleshed potatoes be required to meet the handling requirements set for round variety potatoes. These requirements are that potatoes grade at least U.S. No. 2 and be at least 1⅞ inches in diameter.

Most of the round type potatoes that are grown in Washington and shipped to fresh market outlets are red-skinned varieties. To provide handlers with the opportunity to satisfy increased consumer demand for small-sized potatoes of this type, the current handling regulation provides that round, red-skinned potatoes that are one inch in diameter may be shipped if they otherwise grade at least U.S. No. 1.

The committee recommended that a comparable reduced size requirement be provided for yellow-fleshed potatoes, even though such potatoes are white-skinned. Since these potatoes are a relatively new item available from Washington, the committee believes that shippers should be provided with maximum flexibility in marketing yellow-fleshed potatoes. Accordingly, the rule provides that yellow-fleshed potatoes that are one inch in diameter may also be shipped if they otherwise grade at least U.S. No. 1.

The committee believes that this action will help maintain the quality of image of the Washington State potato industry. Other non-white fleshed varieties, such as purple or blue fleshed, will continue to be exempt because very few of these potatoes are being produced, and such potatoes are a specialty crop and generally do not directly compete with white fleshed potatoes. In addition, blue or purple fleshed potatoes are customarily marketed in different outlets than white and yellow fleshed potatoes.

Exports of Washington potatoes have increased considerably since the early 1980's. Fresh potato exports from Washington State in 1981 amounted to abut 420,000 cwt. In 1988, fresh potato exports exceeded 590,000 cwt. A record high of about 665,000 cwt. was reached in 1986. Fresh potato exports in 1987 were about 550,000 cwt. and had an estimated value of $10,383,000. Destinations for these potatoes included Hong Kong, Sweden and Singapore. Possibly the greatest potential for export market expansion lies in the Pacific Rim countries.

Currently, export shipments of potatoes are exempt from the requirements of the handling regulation. To provide a means by which foreign buyers can continue to obtain high quality when purchasing Washington State potatoes, the committee unanimously recommended that all potatoes exported in 50-pound cartons be required to be at least U.S. No. 1 grade. This export pack requirement is similar to the domestic pack requirement which requires potatoes packed in 50-pound cartons to be at least U.S. No. 1, except that an additional tolerance for internal defects is provided for domestic shipments. These cartons are regarded as a premium pack and are the container most often used for export shipments. Shippers will continue to be able to fill specific orders for lower quality potatoes by packing them in other than 50-pound cartons, since only potatoes packed in such cartons will be required to meet this minimum quality requirement. This action should result in increased purchases and improved returns to growers.

Other exemptions currently provided are unchanged. The grade, size, maturity, and pack requirements are not applicable to shipments of potatoes for livestock feed, charity, seed, prepeeling, or other processing. Shipments to these outlets are also free from inspection requirements.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area. Since yellow fleshed potatoes are generally considered to be a round white type, imported yellow fleshed potatoes are required to meet the same quality and size requirements set for round white varieties of potatoes. Because the import requirements for round white potatoes are based on those established under the marketing orders covering Colorado Area 3 potatoes (M.O. 948) and Southeastern States (M.O. 953), the changes to the handling requirements for Washington State potatoes will have no effect on the potato import regulation. Accordingly, the findings and determinations with respect to imports of Irish potatoes contained in section 980.1 of the regulations will not be changed by this action.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant

economic impact on a substantial number of small entities.

Notice of this action was given in the June 8, 1989, **Federal Register** [54 FR 24562] providing interested persons until June 19, 1989, to file written comments. No comments were received.

After consideration of all relevant matter presented including the information and recommendations submitted by the committee, and other available information, it is hereby found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the shipping season is expected to begin in early July and this rule, in order to be of maximum benefit to producers, should apply to shipments at the beginning of the season.

List of Subjects in 7 CFR Part 946

Marketing agreements and orders, Potatoes, Washington.

For the reasons set forth in the preamble, 7 CFR Part 946 is hereby amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR Part 946 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

1a. A new subpart heading is added to Part 946 immediately preceding § 946.336 as follows:

Subpart—Handling Regulations

2. Section 946.336 is amended by revising the introductory text and paragraphs (a)(2)(i), (c), and (d)(7) to read as follows:

Note: This section will appear in the Code of Federal Regulations.

§ 946.336 Handling regulation.

No person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a), (b), (c), and (g) of this section or unless such potatoes are handled in accordance with paragraphs (d) and (e), or (f) of this section, except that shipments of the blue or purple flesh varieties of potatoes shall be exempt from both this handling regulation and the assessment requirements specified in § 946.41.

(a)(2) * * *

(i) *Round varieties*—1⅞ inches (47.6 mm) minimum diameter, except yellow fleshed and round red varieties may be 1 inch (25.4 mm) minimum diameter, if U.S. No. 1.

* * * * * *

(c) *Pack requirements*—(1) *Domestic.* Potatoes packed in 50-pound cartons shall be U.S. No. 1 grade or better, except that potatoes which fail to meet the U.S. No. 1 grade only because of internal defects may be shipped provided the lot contains not more than 10 percent damage by any internal defect or combination of internal defects but not more than 5 percent serious damage by any internal defect or combination of internal defects.

(2) Export. Potatoes packed in 50-pound cartons shall be U.S. No. 1 grade or better.

(d) * * *

(7) *Export*, except to Alaska and Hawaii and except as provided in (c)(2) of this paragraph.

* * * * * *

Dated: June 29, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–15724 Filed 6–30–89; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 51, and 60

RIN 3150–AC04

NEPA Review Procedures for Geologic Repositories for High-Level Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is adopting procedures for implementation of the National Environmental Policy Act with respect to geologic repositories for high-level radioactive waste. In accordance with the Nuclear Waste Policy Act of 1982, as amended, the Commission will adopt, to the extent practicable, the final environmental impact statement prepared by the Department of Energy that accompanies a recommendation to the President for repository development. The rule recognizes that the primary responsibility for evaluating environmental impacts lies with the Department of Energy; and, consistent with this view, it sets out the standards and procedures that would be used in determining whether adoption of the Department's final environmental impact statement is practicable.

EFFECTIVE DATE: August 2, 1989.

FOR FURTHER INFORMATION CONTACT: James R. Wolf, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–1641.

SUPPLEMENTARY INFORMATION: Under applicable law, the Nuclear Regulatory Commission exercises regulatory authority with respect to the development, operation, and permanent closure of one or more geologic repositories for high-level radioactive waste and spent nuclear fuel. In connection with the exercise of this authority, the Commission is required by the National Environmental Policy Act of 1969 (NEPA), to give appropriate consideration to the environmental impacts of its actions. The scope of such consideration and the procedure to be followed by the Commission in fulfilling its NEPA responsibilities are addressed by the Nuclear Waste Policy Act of 1982, as amended (NWPA). This statute directs the Commission to adopt the environmental impact statement (EIS) prepared by the Department of Energy (the applicant for the NRC license with respect to the repository) "to the extent practicable," with the further proviso that adoption of DOE's EIS shall be deemed to satisfy the Commission's NEPA responsibilities "and no further consideration shall be required." The Commission has been engaged in rulemaking to implement this statutory framework.

The Commission accordingly undertook a careful review of the text and statutory history of the pertinent provisions of the Nuclear Waste Policy Act. The results of this review were presented in the notice of proposed rulemaking published in the **Federal Register** on May 5, 1988, 53 FR 16131. As summarized therein:

(1) The Commission will conduct a thorough review of DOE's draft EIS and will provide comments to DOE regarding the adequacy of the statement.

(2) If requested by Congress pursuant to the NWPA, the Commission will provide comments on DOE's EIS to the Congress with respect to a State or Tribal notice of disapproval of a designated site.

(3) The NRC will find it practicable to adopt DOE's EIS (or any DOE supplemental EIS) unless:

(a) The action proposed to be taken by the NRC differs in an environmentally significant way from the action described in DOE's license application, or

(b) Significant and substantial new information or new considerations render the DOE EIS inadequate.

(4) The DOE EIS will accompany the application through the Commission's review process, but will be subject to litigation in NRC's licensing proceeding only where factors 3(a) or 3(b) are present.

In accordance with NWPA, the primary responsibility for evaluating environmental impacts lies with DOE, and DOE would therefore be required to supplement the EIS, whenever necessary, to consider changes in its proposed activities or any significant new information.

The Commission received nine letters of comment in response to its notice of proposed rulemaking. The commenters were the State of Nevada (Nuclear Waste Project Office), the U.S. Department of Energy, the Council on Environmental Quality, the U.S. Environmental Protection Agency, and several private organizations (the Nevada Nuclear Waste Task Force, the Environmental Defense Fund, the Southwest Research and Information Center, the Sierra Club, and the Edison Electric Institute).

After reviewing and giving careful consideration to all the comments received, the Commission now adopts, in substantial part, the position set forth in its earlier notice. In particular, the Commission continues to emphasize its view that its role under NWPA is oriented toward health and safety issues and that, in general, nonradiological environmental issues are intended to be resolved in advance of NRC licensing decisions through the actions of the Department of Energy, subject to Congressional and judicial review in accordance with NWPA and other applicable law. The Commission anticipates that many environmental questions would have been, or at least could have been, adjudicated in connection with an environmental impact statement prepared by DOE, and such questions should not be reopened in proceedings before NRC.

State of Nevada Comments

We begin with the comments presented by the State of Nevada not only because of its important sovereign interests, but because of the fundamental nature of the issues that are raised. In Nevada's view, NRC "poses, analyzes and answers the wrong question." According to Nevada, the question is how NRC should perform its own, independent, NEPA responsibilities and not how NRC should review and approve the adequacy of DOE's EIS.

Having posed the question in terms of responsibilities under NEPA, Nevada reviews the many cases that hold that where a major federal action involves two or more federal agencies, each agency must evaluate the environmental consequences of the entire project and determine independently whether the statutory requirements have been satisfied. NRC is not relieved from the responsibility of making such an independent determination, according to the State, because it would still be able to carry out its licensing responsibilities in a manner consistent with law. NRC, which is directed by NWPA to adopt the DOE environmental impact statement "to the extent practicable," need only do so to the extent that it is otherwise within the customary practice of the agency.

The views of the State bring the question into sharp focus. If the issue were properly to be posed as Nevada urges—i.e., with an assumption that the Commission's NEPA responsibilities are not modified by NWPA—then the regulatory language suggested in its comment letter would have merit. But the Commission firmly believes that the law was intended to have all matters associated with the environmental impacts of repository development considered and decided, to the fullest extent practicable, apart from NRC licensing proceedings. As explained when the proposed rule was published, this interpretation is supported both by the specific legislative and judicial review procedures built into the statutory structure and by the accompanying legislative history. The Commission believes that the result is sensible. Concerns arising under NEPA—if not resolved through the negotiation procedures established by NWPA—would be adjudicated early, with finality, and with every reasonable argument being capable of being advanced to the oversight of Congress and the courts. From that point on, in the absence of substantial new information or other new considerations, it would be proper to inquire only whether the specific detailed proposal of the Department of Energy could be implemented in a manner consistent with the health and safety of the public. The resolution of issues in this manner for purposes of NEPA would in no event affect the framing or decision of health and safety issues, under the Atomic Energy Act, in NRC licensing proceedings.[1]

Although quite different statutory schemes are involved, we perceive a parallel with issues raised in *Quivira Mining Company* v. *NRC*, 866 F.2d 1246 (10th Cir. 1989). That case concerned regulations adopted by NRC pursuant to the Uranium Mill Tailings Radiation Control Act of 1978. It considered, among other things, the extent to which NRC, in giving the "due consideration to economic costs" required by the statute, could rely upon a cost-benefit study previously carried out by the Environmental Protection Agency to support EPA's rulemaking responsibilities. The Commission concluded that since the agencies' actions coincided in material respects, all statutory language would retain significant force and effect, and the time period allowed for the issuance of its regulations was inadequate for an independent study, Congress did not wish to require the NRC to perform a second cost-benefit analysis. The Court found the legislative history, as well as the statutory language, to be ambiguous on the question; as such, it upheld the NRC construction. Here, given the identity of the actions being considered by the two agencies (DOE and NRC), we believe it to be a fair reading of Congressional intent that NRC can adequately exercise its NEPA decisionmaking responsibility with respect to a repository by relying upon DOE's environmental impact statement. As in *Quivira Mining*, the timing requirement—under NWPA, a three-year licensing process for a unique facility, involving standards of exceptional complexity, requiring disputatious predictions of future human activity and natural processes for thousands of years—supplies practical support for our interpretation. Congress did not speak to the precise question of the standard to be used in deciding whether adoption of DOE's environmental impact statement is practicable; and if our construction is not the only one that might be proposed, it seems to us to be, at a minimum, "permissible."

Once DOE's EIS has been adopted, the statute expressly relieves the Commission from further consideration of the environmental concerns addressed in the statement. Congressional review of a State's resolution of disapproval—should such a resolution be passed—would permit (and, most likely, virtually ensure) that issues other than those to be

[1] The State took exception to the standard for completeness of information in a license application—viz. the "reasonably available" standard of 10 CFR 60.24. Although the matter is not strictly at issue in this rulemaking, the Commission regards the State's concern in this regard to be overdrawn. While information may be sufficient to meet the requirements of § 60.24, this in no way implies that such information will prove to be sufficient to meet the applicant's burden of persuasion under § 60.31.

adjudicated under the Atomic Energy Act would have been considered and weighed. Under these circumstances, it would do no violence to national environmental policy to proscribe further examination in administrative proceedings.

Council on Environmental Quality Comments

The Commission invited the Council on Environmental Quality to comment on the proposed rule. The conclusion of CEQ was similar to that of the State of Nevada. In particular, CEQ read the phrase "to the extent practicable" to mean that NRC should make an independent evaluation of the DOE environmental impact statement, adopting some or all of it as appropriate so as to avoid unnecessary duplication. From the Commission's perspective, though, the position does not fully take into account the detailed scheme for environmental review established by NWPA. Neither the related provisions of the statute (including, for example, those dealing with legislative and judicial review and establishing time frames for Commission decisionmaking) are analyzed, nor is there any examination of the legislative history which, as described in the preamble to the proposed rule, supports our point of view. We continue to believe that it is clear—at least in the debates of the House of Representatives with respect to the bill which, with amendments, was enacted into law—that the Commission role was intentionally to be directed to health and safety issues to the exclusion, absent new information or new considerations, of issues arising under NEPA.

It is worth noting, though, that CEQ recognizes that the Commission might "defer" to a court finding that the DOE environmental impact statement is adequate. This is certainly close, if not identical to, the Commission's position that a judicial finding of adequacy would preclude further litigation of the matter in NRC licensing proceedings.

Comments of Environmental Organizations

The environmental organizations' comments included a number of arguments similar to those of the State of Nevada with respect to the Commission's customary NEPA responsibilities. As already indicated, it is our view that Congress intended, under NWPA, for NRC to accept the DOE EIS in the absence of substantial new considerations or new information. We reject the suggestion made by the Sierra Club that the approach we have outlined amounts to an abdication of any Commission responsibility.

In addition, however, a number of comments of somewhat narrower scope were submitted by environmental organizations (as well as by the State of Nevada) and are addressed here.

One matter that particularly concerned the private Nevada Nuclear Waste Task Force involved the relationship between the judicial process and the Commission's administrative process. The Task Force cautioned that NRC should not rely on there having been a court ruling with regard to the adequacy of DOE's environmental impact statement in advance of the Commission's licensing decision (when a judicial finding of inadequacy, affecting much or little of the EIS, could be treated as a new consideration). In fact, such reliance is not essential. It is our expectation that, under NWPA, a petition for review of the EIS would need to have been filed roughly contemporaneously with DOE's submission of a license application to NRC, and that judgment might have been entered within the three years envisaged for Commission licensing. Whether or not this proves to be the case is not controlling, for the standard for adoption does not rest upon collateral estoppel principles. Similarly, we find it beside the point to speculate regarding the possibility that a reviewing court might delay its decision on the adequacy until it sees the NRC conclusions in the licensing proceeding. Such delay would not stand in the way of the Commission's taking final action.

Although we thus do not rest our position upon the availability of a prior judgment of a court, we reiterate our view, as described in the preamble to the proposed rule, that such a judgment, if entered, would be controlling on the question of the adequacy of the EIS; and if the EIS were found to be adequate, it would be practicable for the Commission to adopt it.

We were criticized for suggesting that members of the public might be precluded from raising issues anew on the grounds that they had been represented by State officials in prior judicial proceedings. This position was claimed to be inconsistent with NRC intervention rules which, it is correctly argued, traditionally consider the interests of the state in which a facility is located as being distinguishable from the interests of particular members of the public who may be affected by the issuance of a license. Our first response is that our case law with respect to standing for purposes of intervention does not necessarily apply in the context of collateral estoppel or issue preclusion, where the policies of repose come into play. But, in addition, we would reach the same result even if informed members of the public were not constrained by the putative prior judgment against the state; for in that event their failure to pursue their claims within the 180 days specified by section 119 of NWPA would operate as a bar.

The Commission's position that failure to challenge DOE's environmental impact statement promptly in the courts bars subsequent challenge to that EIS in NRC proceedings was also criticized. Commenters suggested, instead, that affected parties may decide for reasons of litigative strategy or otherwise to contest questions regarding the repository in NRC licensing proceedings rather than by going to court about the DOE environmental impact statement. But such a unilateral decision on their part cannot operate as a means to circumvent the clear policy of the NWPA requiring prompt adjudication of the issues raised by the EIS. When there has been a full and fair opportunity to raise the challenge, a party's failure to avail itself should in our view be regarded as an abandonment of its right to do so many years later. *See Oregon Natural Resources Council* v. *U.S. Forest Service,* 834 F.2d 842, 847 (9th Cir. 1987).

There is force to a commenter's suggestion that our proposed rules failed to take account of an EIS having been prepared in connection with a Negotiator-selected site, in which case the Commission review would be governed by section 407 of NWPA, as amended, 42 U.S.C. 10247, instead of section 114, 42 U.S.C. 10134. One difference, as pointed out by the comment, is that for a Negotiator-selected site DOE makes no formal recommendation to the President and the President makes no decision with respect to approval of the site. This difference alone would not affect the approach we take to discharging our NEPA responsibilities, in part because we would expect early judicial review to be available even in the absence of a Presidential decision. In this regard, NWPA authorizes a civil action to review any EIS prepared with respect to "any action" under the applicable subpart and, given our perspective on the intended allocation of functions between DOE and NRC, "any action" could include the Secretary of Energy's submission of an application to the Commission. We think the intent of Congress, as evidenced by the considerable parallelism of the language employed, was generally to establish the

same sort of role for the Commission with respect to any site—whether at Yucca Mountain or at a Negotiator-selected location. We recognize that it is our obligation "to consider the Yucca Mountain site as an alternate to (the Negotiator-selected site) in the preparation of" an EIS. This obligation will be discharged, though, to the extent of our adoption of the DOE environmental impact statement, provided that the alternative sites were addressed therein.

One aspect of the Negotiator-selected site provisions does have to be taken into account, however. For a Negotiator-selected site, a Commission decision to adopt the environmental impact statement must be made "in accordance with § 1506.3 of Title 40, Code of Federal Regulations,"—a limitation that we found not to apply to the EIS submitted under section 114 of NWPA. Under the cited section of the CEQ regulations, the Commission may only adopt the DOE statement if it is "adequate." While a judicial decision on the point would be controlling, we would otherwise need to make an independent judgment in accordance with established practice. The final regulations reflect this possibility. In passing, though, we observe that we find nothing anomalous in having this responsibility in the case of a Negotiator-selected site but not in the case of the Congressionally-designated site at Yucca Mountain, for in the latter case there are opportunities for State disapproval and Congressional consideration that serve to provide a forum outside the Department for the evaluation of environmental concerns.

We are not persuaded by the comment that took exception to our requirement that needed supplements to the EIS would, as a general rule, have to be prepared by DOE—and that DOE's failure to comply with this requirement might be grounds for denial of a construction authorization. It seems to us that such supplementation by DOE would ordinarily be appropriate whenever, in the light of new information or new considerations, its proposed action may give rise to significant environmental impacts that were not addressed in its original EIS.

We were urged to reconsider our position with respect to the imposition of license conditions directed at mitigation of adverse environmental impacts. We had suggested that DOE could itself be held accountable for compliance with the mitigation measures described in its EIS, so that there was no need for them to be subject to litigation in NRC proceedings. The basis for our position is that the departure from planned mitigation measures may well be a major Federal action having significant environmental impacts, which would necessitate the preparation of an environmental impact statement for a project that was otherwise determined to be without significant impact. But, in any event, we see no basis for employing our regulatory authority in this instance to police DOE's compliance with its mitigation plans; it will be subject to no more and no less oversight from interested persons than would be the case for many other developmental projects carried out, after preparation of appropriate environmental documentation, by Federal departments and agencies. To permit the mitigation measures to be litigated in NRC administrative proceedings—legitimate as this may be in other contexts—would run counter to the direction of the NWPA. It would bring in through the back door at least some of the contentions which, in our view, were to be settled in other forums.

An argument was made that amended section 114(f)(6)—which provides that "the Commission" need not consider enumerated factors in any EIS prepared with respect to a repository—indicates that Congress intended for NRC to issue its own EIS. The language in question appears to have been designed as an editorial measure, lacking substantive effect. The legislative history, cited with the proposed rule, demonstrates that no important change was being made in NRC's NEPA responsibilities, which under the 1982 statute were limited in the manner we have described. The statutory language is not surplusage, for NRC may have an obligation to prepare a supplemental EIS where there are new considerations or new information.

Department of Energy Comments

The Department of Energy, which is the prospective applicant affected by the proposed rules, agreed that NWPA counsels against wide-ranging independent examination by NRC of environmental concerns during the course of the licensing proceedings. DOE also concurred with NRC's view that a judicial determination of adequacy of an EIS precludes further litigation of that issue and that failure to raise an issue within the time set out in NWPA bars later challenge. The other DOE comments call for some clarification of the Commission's intentions, but do not prompt any fundamental change of the position that had previously been outlined.

For example, we can put to rest DOE's concern that NRC might defer its acceptance review of the license application until the entire judicial review process on the EIS had run its course. Under the amendments, both as proposed and as adopted, the acceptance review applies only to the completeness of "the application," not "the application or environmental report" as under existing 10 CFR 2.101(f)(2).

We believe we can also satisfy DOE's concern with respect to our mention, at 53 FR 16132, that there may be a need for "multiple EIS's." The point being made was not that NRC might need to prepare its own EIS when DOE had already done so, but that the licensing process may involve more than one major federal action (for example, the construction of the repository on the one hand and the emplacement of waste on the other) that could necessitate the preparation of a supplemental EIS if not an entirely new one, if the impacts of such actions are not evaluated or properly encompassed in the initial EIS.

The responsibility for supplementation was another point of contention. DOE—along with some of the other commenters—argued that it would be inappropriate for it to be obliged to supplement its completed EIS in order to satisfy any independent NEPA responsibilities of the Commission. We agree with this statement. But, as DOE itself acknowledges, it might need to supplement the EIS if it were to make a substantial change in the proposed action or if significant new circumstances or information were to become available. That is all that is required by the regulatory language (10 CFR 60.24(c)).

However, in support of its position, DOE suggested that NRC adoption under the NWPA provisions was related specifically to the EIS "submitted as part of the Department's recommendation to the President." But the language of Section 114(f) quite clearly applies to "any environmental impact statement prepared in connection with a repository proposed to be constructed" by DOE under NWPA.

DOE is correct in pointing out that a supplemental EIS would not necessarily be required in the event of a substantial change in the proposed action, where the change and the impacts thereof had previously been considered in the original statement.

The principal remaining issue raised by DOE's comments concerns the appropriate role of NRC in DOE's NEPA activities. DOE suggests that NRC should be a "cooperating agency," a role that the Council on Environmental

Quality has recognized as being appropriate in the licensor-licensee context. We are not persuaded. The present situation is unique because—unlike the customary licensor-licensee situation—the particular statute guiding our approach (i.e., NWPA) removes the balancing of environmental considerations from our independent judgment. Under these circumstances, it strikes us as particularly out of place for NRC to undertake the kind of critical evaluation that a "cooperating agency" should perform in the preparation of an EIS. The Commission, nevertheless, has jurisdiction and expertise that it can, and will, bring to DOE's attention as a commenting agency through the entire DOE NEPA process. We shall not hesitate, in particular, to raise concerns that might subsequently also require adjudication, under the standards of the Atomic Energy Act, in our licensing proceedings. Other issues, of course, can be identified in our comments as well. In other words, NRC as a commenting agency can and will play an important constructive role all the while from the scoping stage through preparation of the environmental impact statement; but as the sole responsibility for weighing the environmental impacts in support of a recommendation to the President is vested in DOE, DOE properly should be the agency with formal sponsorship of the EIS as well.

We respond, finally, to DOE's claim that the requirement for DOE to inform the Commission of the status of legal action on the repository is unnecessary, since this information is a matter of public record. As a general rule, the applicant has the burden of placing on the record those factual matters upon which NRC decisions may be predicated. Although we have not placed sole reliance upon principles of issue preclusion (collateral estoppel), it remains our position that a final judgment of a reviewing court with respect to the adequacy of the DOE final environmental impact statement would be controlling and would support our adoption of such FEIS. Accordingly, it is appropriate for DOE to report on the status thereof.

Industry Comments

Comments received from Edison Electric Institute generally supported the Commission's view that its essential responsibility under NWPA is to address radiological safety issues under the Atomic Energy Act, and that the requirements of NEPA were substantively modified as they apply to the high-level nuclear waste program.

We decline to follow EEI's suggestion that issues related to adoption of DOE's environmental impact statement be made prior to the hearing process and outside the adjudicatory arena. As we have noted before, the impact statement does not simply "accompany" an agency recommendation for action in the sense of having some independent significance in isolation from the deliberative process. Rather the impact statement is an integral part of the Commission's decision. It forms as much a vital part of the NRC's decisional record as anything else. *Public Service Company of Oklahoma* (Black Fox Station, Units 1 and 2), CLI–80–31, 12 NRC 264, 275 (1980). Even though the range of issues to be considered in the hearing may be limited, the formal function of the environmental impact statement as an element of the licensing decision remains.

However, we find merit in EEI's proposal to fix an early schedule for the NRC staff to present its position on the practicability of adoption and for other parties to file contentions with respect to the practicability of adoption. Accordingly, the final rule requires the NRC staff to present its position on adoption at the time that the notice of hearing is published in the **Federal Register**. Any contentions filed by any other party to the proceeding must be filed within thirty days after the notice of hearing is published. In the event that "substantial new considerations or new information" subsequently arises, contentions concerning the practicability of adopting DOE's EIS that are filed after the 30-day deadline established in the rule must be accompanied by a demonstration of compliance with the late filing criteria in 10 CFR 2.1014.

Changes from the Proposed Rule

Section 51.67 Environmental Information Concerning Geologic Repositories

This section is revised to provide for the submission of environmental impact statements, pursuant to Title IV of NWPA, as amended, with respect to a Negotiator-selected site. A further change reflects DOE's comment that supplement would not be required where a modification to its plans had been previously addressed by its EIS.

Section 51.109 Public Hearings in Proceedings for Issuance of Materials License with Respect to a Geologic Repository

In the final rule, paragraph (a) incorporates a schedule for the staff to present its position on the practicability of adoption of the DOE environmental impact statement, and for the filing of contentions with respect thereto. Consistent with the recently-completed LSS (Licensing Support System) rulemaking, a period of thirty days after notice of hearing is provided for the submission of contentions.

Paragraph (c) is revised so that the special criterion for adoption, as discussed herein, will apply only with respect to the geologic repository at the Yucca Mountain site. Any EIS for a Negotiator-selected site would be excluded from the application of this paragraph. A conforming change appears in paragraph (d).

Paragraph (e) is modified to emphasize that the Commission's customary policies will be observed except for adoption of an EIS prepared under Section 114. This is achieved by the insertion of the cross-reference ("in accordance with paragraph (c)") in the introductory clause. As the language has been modified, it permits the adoption of other DOE environmental impact statements with respect to a Negotiator-selected site in accordance with generally applicable law. This includes observance of the procedures outlined in 40 CFR 1506.3. This is addressed adequately in Appendix A to 10 CFR Part 51, Subpart A, and requires no further elaboration in the text of the rule.

Petition for Rulemaking

The Commission's earlier notice invited comments upon the related portions of a petition for rulemaking submitted by the States of Nevada and Minnesota, PRM-60-2A, 50 FR 51701, December 19, 1985. With the exception of the State of Nevada, none of the comments received by the Commission in response to the notice addressed the petition as such. The State of Nevada referred to the petition, recognized that some of the considerations therein have been mooted, and urged that alternative language be considered in the proposed rule, in place of that which they had recommended in the petition.

The section of the petition which provides language pertaining to the adoption of DOE's EIS (i.e., Section IV.3) is denied. However, the issues identified by the petition regarding the criteria and procedures for adoption of DOE's EIS have been considered in this proceeding. Although the language being promulgated differs from that proposed by the petitioners, the Commission is in full agreement with the petitioners' argument that adoption of DOE's EIS must not compromise the independent responsibilities of NRC to protect the public health and safety under the Atomic Energy Act of 1954. Our

rulemaking approach is in fact designed to enhance our ability to address these health and safety issues as effectively and objectively as possible.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in categorical exclusions 10 CFR 51.22(c)(1) and (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval numbers 3150-0021 and 0127.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 USC 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The only entity subject to regulation under this amended rule is the U.S. Department of Energy.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and record keeping requirements.

10 CFR Part 60

High-level waste, Nuclear power plants and reactors, Nuclear materials, Penalty, Reporting and record keeping requirements, Waste treatment and disposal.

Issuance

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the National Environmental Policy Act of 1969, as amended, the Nuclear Waste Policy Act of 1982, as amended, and 5 U.S.C. 553, the NRC adopts the following amendments to 10 CFR Part 51, and related conforming amendments to 10 CFR Parts 2 and 60.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. In § 2.101, paragraphs (f)(1), (2), (5), and (7) are revised and (f) (4) is removed and reserved to read as follows:

§ 2.101 Filing of application.

* * * * *

(f)(1) Each application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter and any environmental impact statement required in connection therewith pursuant to Subpart A of Part 51 of this chapter shall be processed in accordance with the provisions of this paragraph.

(2) To allow a determination as to whether the application is complete and acceptable for docketing, it will be initially treated as a tendered document, and a copy will be available for public inspection in the Commission's Public Document Room. Twenty copies shall be filed to enable this determination to be made.

* * * * *

(4) [Reserved]

(5) If a tendered document is acceptable for docketing, the applicant will be requested to (i) submit to the Director of Nuclear Material Safety and Safeguards such additional copies of the application and environmental impact statement as the regulations in Part 60 and Subpart A of Part 51 of this chapter require, (ii) serve a copy of such application and environmental impact statement on the chief executive of the municipality in which the geologic repository operations area is to be located, or if the geologic repository operations area is not to be located within a municipality, on the chief executive of the county (or to the Tribal organization, if it is to be located within an Indian reservation), and (iii) make direct distribution of additional copies to Federal, State, Indian Tribe, and local officials in accordance with the requirements of this chapter and written instructions from the Director of Nuclear Material Safety and Safeguards. All such copies shall be completely assembled documents, identified by docket number. Subsequently distributed amendments to the application, however, may include revised pages to previous submittals and, in such cases, the recipients will be responsible for inserting the revised pages.

* * * * *

(7) Amendments to the application and supplements to the environmental impact statement shall be filed and distributed and a written statement shall be furnished to the Director of Nuclear Material Safety and Safeguards in the same manner as for the initial application and environmental impact statement.

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PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

3. The authority citation for Part 51 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853-854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95-604, Title II, 92 Stat. 3033-3041. Sections 51.20, 51.30, 51.60, 51.61, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100-203, 101 Stat. 1330-223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036-3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Secs. 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

4. In § 51.20, existing paragraph (b)(13) is redesignated as paragraph (b)(14) and a new paragraph (b)(13) is added to read as follows:

§ 51.20 Criteria for and identification of licensing and regulatory actions requiring environmental impact statements.

* * * * *

(b) * * *

* * * * *

(13) Issuance of a construction authorization and license pursuant to Part 60 of this chapter.

* * * * *

5. Section 51.21 is revised to read as follows:

§ 51.21 Criteria for and identification of licensing and regulatory actions requiring environmental assessments.

All licensing and regulatory actions subject to this subpart require an environmental assessment except those identified in § 51.20(b) as requiring an environmental impact statement, those identified in § 51.22(c) as categorical exclusions, and those identified in § 51.22(d) as other actions not requiring environmental review. As provided in § 51.22(b), the Commission may, in special circumstances, prepare an environmental assessment on an action covered by a categorical exclusion.

6. Section 51.22 is amended, by revising the heading and adding a new paragraph (d), to read as follows:

§ 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

* * * * *

(d) In accordance with section 121 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141), the promulgation of technical requirements and criteria that the Commission will apply in approving or disapproving applications under Part 60 of this chapter shall not require an environmental impact statement, an environmental assessment, or any environmental review under subparagraph (E) or (F) of section 102(2) of NEPA.

7. In § 51.26, paragraph (a) is revised and a new paragraph (c) is added, to read as follows:

§ 51.26 Requirement to publish notice of intent and conduct scoping process.

(a) Whenever the appropriate NRC staff director determines that an environmental impact statement will be prepared by NRC in connection with a proposed action, a notice of intent will be prepared as provided in § 51.27, and will be published in the **Federal Register** as provided in § 51.116, and an appropriate scoping process (see §§ 51.27, 51.28, and 51.29) will be conducted.

* * * * *

(c) Upon receipt of an application and accompanying environmental impact statement under § 60.22 of this chapter (pertaining to geologic repositories for high-level radioactive waste), the appropriate NRC staff director will include in the notice of docketing required to be published by § 2.101(f)(8) of this chapter a statement of Commission intention to adopt the environmental impact statement to the extent practicable. However, if the appropriate NRC staff director determines, at the time of such publication or at any time thereafter, that NRC should prepare a supplemental environmental impact statement in connection with the Commission's action on the license application, the procedures set out in paragraph (a) of this section shall be followed.

8. A new § 51.67 is added to read as follows:

§ 51.67 Environmental information concerning geologic repositories.

(a) In lieu of an environmental report, the Department of Energy, as an applicant for a license or license amendment pursuant to Part 60 of this chapter, shall submit to the Commission any final environmental impact statement which the Department prepares in connection with any geologic repository developed under Subtitle A of Title I, or under Title IV, of the Nuclear Waste Policy Act of 1982, as amended. (See § 60.22 of this chapter as to required time and manner of submission.) The statement shall include, among the alternatives under consideration, denial of a license or construction authorization by the Commission.

(b) Under applicable provisions of law, the Department of Energy may be required to supplement its final environmental impact statement if it makes a substantial change in its proposed action that is relevant to environmental concerns or determines that there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. The Department shall submit any supplement to its final environmental impact statement to the Commission. (See § 60.22 of this chapter as to required time and manner of submission.)

(c) Whenever the Department of Energy submits a final environmental impact statement, or a final supplement to an environmental impact statement, to the Commission pursuant to this section, it shall also inform the Commission of the status of any civil action for judicial review initiated pursuant to section 119 of the Nuclear Waste Policy Act of 1982. This status report, which the Department shall update from time to time to reflect changes in status, shall:

(1) State whether the environmental impact statement has been found by the courts of the United States to be adequate or inadequate; and

(2) Identify any issues relating to the adequacy of the environmental impact statement that may remain subject to judicial review.

9. A new § 51.109 is added to read as follows:

§ 51.109 Public hearings in proceedings for issuance of materials license with respect to a geologic repository.

(a)(1) In a proceeding for the issuance of a license to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area, the NRC staff shall, upon the publication of the notice of hearing in the **Federal Register**, present its position on whether it is practicable to adopt, without further supplementation, the environmental impact statement (including any supplement thereto) prepared by the Secretary of Energy. If the position of the staff is that supplementation of the environmental impact statement by NRC is required, it shall file its final supplemental environmental impact statement with the Environmental Protection Agency, furnish that statement to commenting agencies, and make it available to the public, before presenting its position, or as soon thereafter as may be practicable. In discharging its responsibilities under this paragraph, the staff shall be guided by the principles set forth in paragraphs (c) and (d) of this section.

(2) Any other party to the proceeding who contends that it is not practicable

to adopt the DOE environmental impact statement, as it may have been supplemented, shall file a contention to that effect within thirty days after the publication of the notice of hearing in the **Federal Register**. Such contention must be accompanied by one or more affidavits which set forth factual and/or technical bases for the claim that, under the principles set forth in paragraphs (c) and (d) of this section, it is not practicable to adopt the DOE environmental impact statement, as it may have been supplemented. The presiding officer shall resolve disputes concerning adoption of the DOE environmental impact statement by using, to the extent possible, the criteria and procedures that are followed in ruling on motions to reopen under § 2.734 of this chapter.

(b) In any such proceeding, the presiding officer will determine those matters in controversy among the parties within the scope of NEPA and this subpart, specifically including whether, and to what extent, it is practicable to adopt the environmental impact statement prepared by the Secretary of Energy in connection with the issuance of a construction authorization and license for such repository.

(c) The presiding officer will find that it is practicable to adopt any environmental impact statement prepared by the Secretary of Energy in connection with a geologic repository proposed to be constructed under Title I of the Nuclear Waste Policy Act of 1982, as amended, unless:

(1)(i) The action proposed to be taken by the Commission differs from the action proposed in the license application submitted by the Secretary of Energy; and

(ii) The difference may significantly affect the quality of the human environment; or

(2) Significant and substantial new information or new considerations render such environmental impact statement inadequate.

(d) To the extent that the presiding officer determines it to be practicable, in accordance with paragraph (c) of this section, to adopt the environmental impact statement prepared by the Secretary of Energy, such adoption shall be deemed to satisfy all responsibilities of the Commission under NEPA and no further consideration under NEPA or this subpart shall be required.

(e) To the extent that it is not practicable, in accordance with paragraph (c) of this section, to adopt the environmental impact statement prepared by the Secretary of Energy, the presiding officer will:

(1) Determine whether the requirements of section 102(2) (A), (C), and (E) of NEPA and the regulations in this subpart have been met;

(2) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken;

(3) Determine, after weighing the environmental, economic, technical and other benefits against environmental and other costs, whether the construction authorization or license should be issued, denied, or appropriately conditioned to protect environmental values;

(4) Determine, in an uncontested proceeding, whether the NEPA review conducted by the NRC staff has been adequate; and

(5) Determine, in a contested proceeding, whether in accordance with the regulations in this subpart, the construction authorization or license should be issued as proposed.

(f) In making the determinations described in paragraph (e), the environmental impact statement will be deemed modified to the extent that findings and conclusions differ from those in the final statement prepared by the Secretary of Energy, as it may have been supplemented. The initial decision will be distributed to any persons not otherwise entitled to receive it who responded to the request in the notice of docketing, as described in § 51.26(c). If the Commission or the Atomic Safety and Licensing Appeal Board reaches conclusions different from those of the presiding officer with respect to such matters, the final environmental impact statement will be deemed modified to that extent and the decision will be similarly distributed.

(g) The provisions of this section shall be followed, in place of those set out in § 51.104, in any proceedings for the issuance of a license to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area.

10. In § 51.118, the existing text is redesignated as paragraph (a) and a new paragraph (b) is added, to read as follows:

§ 51.118 Final environmental impact statement—Notice of availability.

* * * * *

(b) Upon adoption of a final environmental impact statement or any supplement to a final environmental impact statement prepared by the Department of Energy with respect to a geologic repository that is subject to the Nuclear Waste Policy Act of 1982, the appropriate NRC staff director shall follow the procedures set out in paragraph (a) of this section.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

11. The authority citation for Part 60 is revised to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213, 2228, as amended (42 U.S.C. 10134, 10141).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 60.10, 60.71 to 60.75 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 60.15 [Amended]

12. In § 60.15, paragraph (c) is removed and paragraph (d) is redesignated as paragraph (c).

13. In § 60.21, paragraph (a) is revised to read as follows:

§ 60.21 Content of application.

(a) An application shall consist of general information and a Safety Analysis Report. An environmental impact statement shall be prepared in accordance with the Nuclear Waste Policy Act of 1982, as amended, and shall accompany the application. Any Restricted Data or National Security Information shall be separated from unclassified information.

* * * * *

14. Section 60.22 is revised to read as follows:

§ 60.22 Filing and distribution of application.

(a) An application for a license to receive and possess source, special nuclear, or byproduct material at a geologic repository operations area at a site which has been characterized, and any amendments thereto, and an accompanying environmental impact statement and any supplements, shall be signed by the Secretary of Energy or the Secretary's authorized representative and shall be filed in triplicate with the Director.

(b) Each portion of such application and any amendments, and each environmental impact statement and any supplements, shall be accompanied by 30 additional copies. Another 120 copies shall be retained by DOE for distribution in accordance with written instructions from the Director or the Director's designee.

(c) DOE shall, upon notification of the appointment of an Atomic Safety and Licensing Board, update the application, eliminating all superseded information, and supplement the environmental impact statement if necessary, and serve the updated application and environmental impact statement (as it may have been supplemented) as directed by the Board. At that time DOE shall also serve one such copy of the application and environmental impact statement on the Atomic Safety and Licensing Appeal Panel. Any subsequent amendments to the application or supplements to the environmental impact statement shall be served in the same manner.

(d) At the time of filing of an application and any amendments thereto, one copy shall be made available in an appropriate location near the proposed geologic repository operations area (which shall be a public document room, if one has been established) for inspection by the public and updated as amendments to the application are made. The environmental impact statement and any supplements thereto shall be made available in the same manner. An updated copy of the application, and the environmental impact statement and supplements, shall be produced at any public hearing held by the Commission on the application, for use by any party to the proceeding.

(e) The DOE shall certify that the updated copies of the application, and the environmental impact statement as it may have been supplemented, as referred to in paragraphs (c) and (d) of this section, contain the current contents of such documents submitted in accordance with the requirements of this part.

15. In § 60.24, the section heading and paragraphs (a) and (c) are revised to read as follows:

§ 60.24 Updating of application and environmental impact statement.

(a) The application shall be as complete as possible in the light of information that is reasonably available at the time of docketing.

* * * * *

(c) The DOE shall supplement its environmental impact statement in a timely manner so as to take into account the environmental impacts of any substantial changes in its proposed actions or any significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

16. In § 60.31, the introductory paragraph is revised to read as follows:

§ 60.31 Construction authorization.

Upon review and consideration of an application and environmental impact statement submitted under this part, the Commission may authorize construction if it determines:

* * * * *

17. In § 60.51, the introductory portion of paragraph (a), and paragraph (b), are revised to read as follows:

§ 60.51 License amendment for permanent closure.

(a) DOE shall submit an application to amend the license prior to permanent closure. The submission shall consist of an update of the license application submitted under §§ 60.21 and 60.22, including:

* * * * * *

(b) If necessary, so as to take into account the environmental impact of any substantial changes in the permanent closure activities proposed to be carried out or any significant new information regarding the environmental impacts of such closure, DOE shall also supplement its environmental impact statement and submit such statement, as supplemented, with the application for license amendment.

Dated at Rockville, Maryland this 26th day of June 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-15633 Filed 6-30-89; 8:45 am]

BILLING CODE 7590-01-D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Change in Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; correction.

SUMMARY: This document corrects the most recent amendments to Appendix A to Part 2610 and Appendix A to Part 2622, the interest rates on late premium payments and underpayments or overpayments of employer liability, respectively. Those amendments, which appeared at 54 FR 13520 (April 4, 1989), set forth the interest rates effective as of April 1, 1989. This correction removes the ending date for the effective period of those rates, which will remain in effect until changed.

EFFECTIVE DATE: June 30, 1989.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone (202) 778-8850 ((202) 778-8859 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 89-7930 appearing in the issue of April 4, 1989 (54 FR 13520):

Appendix A to Part 2610—[Amended]

1. On page 13520, column three, under Part 2610, Appendix A, the last entry is corrected by deleting "June 30, 1989". As corrected, this entry should read "April 1, 1989 . . . 12.

Appendix A to Part 2622—[Amended]

2. On page 13521, column one at the top, the last entry is corrected by deleting "June 30, 1989. As corrected, this entry should read "April 1, 1989 . . . 12.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-15553 Filed 6-30-89; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2644

Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interst rate to be effective from July 1, 1989, to September 30, 1989.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC. 20006; telephone 202-778-8850 (202-778-8859 or TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal

Liability. That regulation, codified at 29 CFR Part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to Part 2644. This amendment adds to this appendix the interest rate of 11 percent, which will be effective from July 1, 1989, through September 30, 1989. This rate represents a decrease of ½ percent from the rate in effect for the second quarter of 1989. See 54 FR 13169 (March 31, 1989). This rate is based on the prime rate in effect on June 15, 1989.

The Appendix to 29 CFR Part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2644 of Subchapter F of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for Part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

Appendix A [Amended]

2. Appendix A is amended by adding to the end of the table therein a new entry as follows:

From	To	Date of quotation	Rate (percent)
*	*	*	*
07/01/89.....	09/30/89	06/15/89	11.00

Issued at Washington, DC., on this 23rd day of June, 1989.

Kathleen P. Utgoff,

Executive Director.

[FR Doc. 89-15554 Filed 6-30-89; 8:45 am]

BILLING CODE 7708-01-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 88-8]

Copyright Office, Library of Congress Statements of Account and Filing Requirements for Satellite Carrier Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The "Satellite Home Viewer Act of 1988," in a new section 119 of the Copyright Act, title 17 U.S. Code, creates a statutory license for certain secondary transmissions made by satellite carriers to satellite home dish owners for private viewing. The new satellite carrier statutory license requires the filing of statements of account by those parties availing themselves of the license, as well as the payment of royalty fees. The Copyright Office, after receiving comments from interested parties regarding proposed filing requirements for the satellite carrier statutory license, now issues final regulations.

EFFECTIVE DATE: July 3, 1989.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540. Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

The Satellite Home Viewer Act of 1988, Pub. L. 100-667, amended the Copyright Act, title 17 of the United States Code, by creating a new statutory license for certain secondary transmissions made by satellite carriers to satellite home dish owners. As of January 1, 1989, satellite carriers are permitted, pursuant to the new section 119 license, to make secondary transmissions of "superstation" and network station signals to certain satellite home dish owners for private home viewing upon payment of a statutory royalty fee and satisfaction of certain other conditions. The royalty fee provisions of section 119 will end in four years, and will be replaced by privately negotiated licenses or an arbitrated fee on or before December 31, 1992. The entire Satellite Home Viewer Act itself terminates on December 31, 1994.

On February 28, 1989, the Copyright Office published proposed regulations regarding statements of account and filing requirements for the satellite carrier statutory license (54 FR 8350). At that time the Office invited interested parties to comment on the proposed regulations. Interested parties were also welcome to comment on the terms of section 119 itself, as it took effect January 1, 1989. Comments were invited through March 30, 1989. The Copyright Office received seven comments, including three from representatives of satellite carriers, three from representatives of program suppliers/copyright owners, and one from the Public Broadcasting Service ("PBS"). One additional set of reply comments was received after the March deadline from representatives of Program Suppliers.

2. Statement of Account Filing Deadlines

The Copyright Office proposed that satellite carriers availing themselves of the statutory licensing system under section 119 must submit royalty fees and statement of account forms within one month after the closing date of the

appropriate accounting period. These accounting periods run from January 1 to June 30, and from July 1 to December 31 of each year. Therefore, filings would be due on January 30 and July 30 of each year for the preceding six month period.

Of the seven parties commenting in this proceeding, one satellite carrier, United Video, Inc. ("United Video"), objected to the proposed filing time frame, saying the 30 day requirement was too stringent. Instead, United Video suggested a filing period equal to or greater than the 60 day period which applies to cable operators under the cable television compulsory license. 17 U.S.C. 111.

Representatives of Professional Sports Leagues, however, supported the 30 day filing period, suggesting in addition that filings not made within the thirty day period be subject to a late payment fee.

Program Suppliers, representing copyright owners, and backed in general by the American Society of Composers, Authors and Publishers ("ASCAP"), expressed general support for the body of regulations proposed by the Copyright Office to implement section 119.

The Copyright Office considers the 30 day filing requirement for satellite carrier statements of account to be reasonable. Care has been taken to limit the amount of information satellite carriers are required to submit with the statement of account forms. These forms are much less complex than those that cable television operators file semiannually under section 111's cable compulsory license. The calculations used to compute the satellite carriers' royalty fees are uncomplicated. For administrative reasons, the Office prefers to establish a filing deadline for satellite carrier statements of account that differs from the deadline for cable statements of account. For these reasons, the final regulations adopt the requirement that royalty fees shall be submitted by satellite carriers along with the appropriate statement of account forms within one month after the closing date of the relevant accounting period.

The Office declines at this time to address the issue of levying penalty fees upon satellite carriers that make late filings, except that underpayments and late payments will be assessed interest charges, as discussed later.

3. Refund Request Filing Deadline

In its proposed regulations for implementing section 119, the Copyright Office described conditions under which a request for a refund of royalty fees may be considered. The Office proposed that any such request must be received in the Copyright Office before the expiration of 30 days from the last day of the applicable statement of account *filing period.*

Representatives of two satellite carriers, United Video and Southern Satellite Systems ("Southern") suggested this is too brief a time allowance. Southern reasoned that the 60 day refund period afforded to cable operators under section 111's refund request policy should be mirrored in section 119's refund request regulation. United Video made a similar argument but asked for a one year period for filing refund requests and corrections on the basis that final distribution of royalty fees to copyright owners by the Copyright Royalty Tribunal does not usually occur "for several years after the Statements of Account are filed."

The Copyright Office finds these arguments unpersuasive. The fact that distribution of royalty fees to copyright claimants may not occur for quite some time is not determinative. A satellite carrier that files its statement of account form promptly will be able to detect whether to request a refund by an immediate, timely review of its copy of the filing. In addition, as the Office stated in the proposed regulations, "[a] request for a refund is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will forward the royalty refund to the satellite carrier owner named in the Statement of Account without regard to the (30 day) time limitations * * *" 54 FR 8350, 8354 (February 28, 1989).

The modest information required by the satellite carrier statement of account form and the straight-forward method of calculating the royalties should mean that refund requests are infrequent. Satellite carriers should make fewer errors compared to cable systems and the review of the statements of account should take less time. The Office would compare the satellite carrier filing requirements to those relating to the jukebox compulsory license, for which a 30 day refund period has been found reasonable.

For these reasons, the Copyright Office adopts the proposed regulation which requires requests for refunds to be received in the Office within 30 days from the last day of the applicable statement of account filing period.

4. Assessment of Interest on Late Payments, Underpayments, or Refunds

The proposed regulations contained no reference to assessment of interest on late royalty payments or underpayments. However, one commentator, the Program Suppliers, recommended that the Office address the issue, suggesting not only that interest be assessed on late payments, but also that the Office pay interest on any amounts refunded to satellite carriers properly and justifiably requesting refunds. The Copyright Office agrees that the issue of interest in relation to section 119 payments should be addressed.

The Copyright Office has decided that it should adopt an interest rule relating to section 119 royalty underpayments and late payments. Although the Copyright Act is silent on the question of interest in the context of underpayments, the Office believes its general rulemaking authority, when read in the light of the decision in *Cablevision Systems Development Corp.* v. *Motion Picture Association of America,* 836 F.2d 599, 610 (D.C. Cir.), *cert. denied,* ___ U.S. ___ (1988), provides the necessary authority for the Office to consider and adopt an interest rule for the satellite carrier statutory license. The Copyright Act, 17 U.S.C. 702, provides that "[t]he Register of Copyrights is authorized to establish regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the Register under this title." It is apparent that the operation of the statutory license and the collection of royalty funds is part of the functions and duties of the Register.

The goal of the statutory license is to guarantee that copyright owners receive full compensation for use of their works within the scheme of the license, while at the same time allowing private home viewers access to retransmitted signals they receive from satellite carriers that satisfy the terms of the license. When royalty payments are not made on time in accordance with the terms of the license, the goal of full compensation is frustrated and the copyright owners suffer from the present value loss of funds. The Copyright Office therefore concludes that it is consistent with the intention of Congress to impose a rule requiring interest payments on underpaid royalties pursuant to the satellite carrier statutory license.

As for the applicable rate of interest to be assessed on underpayments or late payments, the Office chooses a rate which most closely approximates the interest earned on royalty payments made within the accounting period filing dates. As a part of its standard practice, the Copyright Office will be making deposits of recently received royalty funds with the U.S. Treasury on the first business day after the close of an

accounting filing period. The interest rate paid on that deposit is readily obtainable from the U.S. Treasury within a day or so of the deposit. The Office feels that making the Treasury rate applicable to all underpayments which resulted from satellite carrier retransmission to private dish owners during that accounting period most closely equals the amount of interest the underpaid royalties would have earned had they been paid in accordance with the accounting period filing deadlines. The one drawback of adopting such an interest rate is that it is not a fixed, predetermined rate. However, the Office concludes that this drawback is mitigated by the relative speed and certainty with which the Treasury interest rate is available to the Office and the public. Therefore, the interest rate applicable under section 119 shall be the interest rate paid by the Treasury on the royalty funds invested by the Copyright Office on the first business day after the close of the filing deadline for the accounting period with respect to which the underpayment occurs. The interest will begin to accrue starting on the first day after the close of the relevant accounting period filing deadline.

While the Copyright Office will be requiring interest on late payments and on underpaid royalties, it has concluded that it will not pay interest on refunds made to satellite carriers. Payment of interest on refunds made under section 119 is administratively impracticable. The Office is not obliged by statute to include an interest charge with refund payments. Satellite carriers can avoid making overpayments by careful review of statements of account before filing the statements. The Office concludes that the copyright owners, which will bear the administrative costs of the refund procedure, should not be required to bear the costs of interest assessment procedures as well. Satellite carriers submitting royalty payments in an untimely fashion must include the proper interest charge with each payment.

Satellite carriers must perform their own interest charge calculations and may obtain the proper interest rate for the applicable accounting period(s) by contacting the Licensing Division, United States Copyright Office, 101 Independence Avenue, SE., Washington, DC 20540, Telephone (202) 707–8150. Interest calculated in accordance with these regulations shall be compounded annually. The accrual period for a particular royalty payment being submitted by a satellite carrier in which interest is due shall end on the date appearing on the certified check, cashier's check, or money order submitted, provided that the payment is received by the Copyright Office within five business days of that date. If the payment is not received within five business days, then the accrual period shall end on the date of actual receipt by the Copyright Office.

5. Name and Address of Cable Systems Acting as Distributors

Program Suppliers suggested additional reporting requirements be added to satellite carriers' statement of account forms, and cable television compulsory licensing statements of account as well. In particular, they suggest that satellite carriers be required to submit with their statement of account forms the names and addresses of cable television systems that also serve as "distributors" as defined in section 119(d)(1). The information could be used to verify that cable systems correctly excluded revenues from "private home viewing" as defined in section 119(d)(5), from the subscriber and the gross receipts calculations used for reporting and payment purposes under section 111.

The Copyright Office acknowledges that copyright owners and cable television systems may want such information made available to them in order to verify that cable systems that also function as section 119 "distributors" have reported correctly. The Office concludes that the best place for verification of the correct allocation of royalty fee payments under sections 111 and 119 would be on the cable television statement of account forms alone. With respect to the satellite carrier form, the suggested listing is rejected as a burdensome reporting requirement for satellite carrier owners. The Copyright Office will consider the best way to amend the cable television statement of account forms to facilitate proper allocation of royalty payments under sections 111 and 119.

6. Computation of Subscriber Numbers for Statement of Account Filings

This issue received the greatest attention from commentators. Initially Program Suppliers and copyright owners agreed with the system proposed by the Copyright Office, and satellite carriers did not.

The proposed regulation would have directed that royalty fees be calculated on a monthly basis such that any subscribers receiving a network station or superstation signal from a satellite carrier for *any period* of each month must be included in the monthly calculation for that signal. This approach was fully supported by the Professional Sports Leagues, and backed in a general way by Program Suppliers and ASCAP.

Netlink, Southern and United Video all objected to the proposed method of calculation. Southern called the method "unreasonable," and suggested instead calculating the royalty fee by using the average number of subscribers receiving each signal each month. United Video termed the proposed method of calculation "inconsistent with the intent of the * * * Act," and said the proposed method would result in "unnecessary, expensive and difficult recordkeeping by the carriers." United Video recommended using subscriber numbers calculated at the end of each month, since business records and subscriber information are maintained on a monthly rather than daily basis. Netlink called the proposed method of fee calculation inefficient, unfair, and "inconsistent with the intent of the Act." It proposed using the average number of subscribers per month, saying this would be easier for carriers to calculate, and would be "more representative of the actual use of the signal." In the alternative, Netlink suggested using the number of subscribers as determined on the last day of each month.

On April 25, 1989, the Copyright Office received Program Suppliers' reply comments to the original set of comments. The Program Suppliers made specific comments about calculation of the number of subscribers each month for royalty fee purposes. One method which had been suggested, that of using the average number of subscribers per month, was not appealing to Program Suppliers, who commented there was no wording in the Act itself to suggest averaging monthly subscriber numbers. They also commented that because various methodologies could be used to average subscribers, there was a distinct possibility of future disputes about royalty payments.

Program Suppliers then recommended that the Copyright Office adopt a regulation which designates a specific date each month as the date on which to take a subscriber count. The example they used was the last day of the month.

The Copyright Office notes that with the addition of the Program Suppliers latest comments, the parties that addressed the issue of the method of counting subscribers each month are in agreement, except for the Professional Sports Leagues.

The Copyright Office has carefully reviewed the comments and suggestions regarding the method of calculating royalty fee payments under the Satellite

Home Viewer Act of 1988, and has reviewed the legislative history of the Act and the language of the Act itself. The goal of section 119 is to guarantee that copyright owners receive full compensation for the use of their works while allowing access to retransmitted network station and superstation signals for private home dish subscribers. An additional goal is establishment of royalty fee rates set by voluntary negotiation as instituted by section 119(c)(2). When satellite carriers and copyright owners agree on a rate to be paid under section 119(c)(2), they may use whatever method of calculation they can agree to.

Satellite carriers and major representatives of copyright owners have basically agreed in their comments on terms by which to calculate royalty fees initially, that is, to set a specific point in time within the month from which to count the number of subscribers that month. The Office at this time sets the last day of the month as the date on which the subscriber count must be based for royalty fee calculations. However, the Office will not hesitate to revisit this question should any party come forward with specific examples of unfairness or manipulation resulting from using subscriber numbers taken by satellite carriers on the last day of each month for use in calculating semiannual royalty fee payments.

7. Status of Public Broadcasting Service Under Section 119

PBS submitted comments devoted entirely to the question of the status of PBS as a network station or a superstation under the Act. No other commentator discussed this topic. This proved to be a thorny issue, as it is difficult to reconcile the language in the text of the statute itself with language contained in part of the legislative history. More specifically, the House Energy and Commerce Committee's report contained one specific reference to PBS as a "network station." [1] On the authority of that one specific reference to PBS as a network station, the Copyright Office initially concluded that PBS should be treated as a network. 54 FR 8350, 8352.

However, PBS demonstrated in its comments that according to the definitions of "network station" and "superstation" in the Act, and according to language found throughout the House Judiciary Committee report and hearings on the Act, references to network stations meant the three commercial network stations only. PBS argued that "as a *legal* matter, it is clear that PBS stations are 'superstations' and not 'network stations' under the Act." The Copyright Office, after conducting a thorough review of the Act and its history, agrees with PBS on this point.

Having argued that PBS stations are legally superstations under the Act, PBS next commented that it nevertheless wants the same treatment for PBS stations as network stations receive under the Act. That is, PBS contends that retransmission of PBS member stations under section 119 should be confined to homes in "unserved areas," as defined in the Act. PBS also contends that the three cent royalty rate applies for retransmission of PBS stations, rather than the twelve cent rate for retransmission of superstations.

The Copyright Office concludes that there is a need to clarify the status of PBS stations under the Act, and the Office recommends that Congress should legislate at an appropriate time. Until there is Congressional clarification regarding the treatment of PBS in the Act, PBS is advised to take the following action. To be treated as the networks are treated, PBS should follow the same filing requirements that networks must follow. According to section 119(a)(2)(C), networks must place on file with the Copyright Office a document identifying the name and address of the person at the network to whom satellite carriers must send notice of retransmission. The network notice should contain the name of the network, the contact person, a full mailing address and phone number. The notice should be sent to Walter Sampson, Chief, Licensing Division, Copyright Office, Library of Congress, Washington, DC 20557, or, if hand delivered, Licensing Division, Madison Building, Room LM-458, 101 Independence Avenue, SE., Washington, DC 20557 for placement in the public file. Thereafter, satellite carriers making secondary transmissions of PBS stations should file subscriber lists with PBS in the manner set forth in section 119(a)(2)(C).

Until Congress clarifies the status of PBS in the Act, the Copyright Office will accept filings from satellite carriers using either the three cent royalty rate or the twelve cent royalty rate as applied to secondary transmissions of PBS stations. The Office recommends to Congress that the definition of "network station" in section 119(d)(2) be changed to: "The term 'network station' means a television broadcast station that is a member station of the Public Broadcasting Service, or a television broadcast station that is owned or operated by, or affiliated with, one or more of the television networks in the United States providing nationwide transmissions, and that transmits a substantial part of that station's typical broadcast day."

Regulatory Flexibility Act Statement

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (Title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since the Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[2]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 201

Satellite carrier license.

Final Regulations

In consideration of the foregoing, the Copyright Office is amending Part 201 of 37 CFR, Chapter II in the manner set forth below.

PART 201—[AMENDED]

1. The authority citation for Part 201 continues to read as follows:

Authority: Copyright Act, Pub. L. 94-553, 90 Stat. 2541 (17 U.S.C. 702), as amended by Pub. L. 100-667.

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[1] "* * * the new statutory license for retransmission of network stations applies, at the present time, exclusively to those stations owned by or affiliated with the three major commercial networks (ABC, CBS, and NBC) and the stations associated with the Public Broadcasting Service." 134 Cong. Rec. 10426, 100th Cong., 2d Sess. (October 19, 1988).

[2] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits"). (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

2. Section 201.11 is added to read as follows:

§ 201.11 Satellite carrier statements of account covering statutory licenses for secondary transmissions for private home viewing.

(a) *General.* This section prescribes rules pertaining to the deposit of Statements of Account and royalty fees in the Copyright Office as required by the satellite carrier license of section 119(b)(1) of Title 17 of the United States Code, as amended by Pub. L. 100–667, in order that certain secondary transmissions by satellite carriers for private home viewing be subject to statutory licensing.

(b) *Definitions.* (1) The terms "distributor," "network station," "private home viewing," "satellite carrier," "subscriber," "superstation," and "unserved household" have the meanings set forth in section 119(d) of title 17 of the United States Code, as amended by Pub. L. 100–667.

(2) The terms "primary transmission" and "secondary transmission" have the meanings set forth in section 111(f) of title 17 of the United States Code.

(c) *Accounting periods and deposit.* (1) Statements of Account shall cover semiannual accounting periods of January 1 through June 30, and July 1 through December 31, and shall be deposited in the Copyright Office, together with the total statutory royalty fee or the confirmed arbitration royalty fee for such accounting periods as prescribed by section 119(b)(1)(B) and (c)(3) of title 17, by not later than July 30, if the Statement of Account covers the January 1 through June 30 accounting period, and by not later than the immediately following January 30, if the Statement of Account covers the July 1 through December 31 accounting period.

(2) Upon receiving a Statement of Account and royalty fee, the Copyright Office will make an official record of the actual date when such statement and fee were physically received in the Copyright Office. Thereafter, the Licensing Division of the Copyright Office will examine the statement and fee for obvious errors or omissions appearing on the face of the documents, and will require that any such obvious errors or omissions be corrected before final processing of the documents is completed. If, as the result of communications between the Copyright Office and the satellite carrier, an additional fee is deposited or changes or additions are made in the Statement of Account, the date that additional deposit or information was actually received in the Office will be added to the official record of the case. However, completion by the Copyright Office of the final processing of a Statement of Account and royalty fee deposit shall establish only the fact of such completion and the date or dates of receipt shown in the official record. It shall in no case be considered a determination that the Statement of Account was, in fact, properly prepared and accurate, that the correct amount of the royalty fee had been deposited, that the statutory time limits for filing had been met, or that any other requirements to qualify for a statutory license have been satisfied.

(3) Statements of Account and royalty fees received before the end of the particular accounting period they purport to cover will not be processed by the Copyright Office. Statements of Account and royalty fees received after the filing deadlines of July 31 or January 31, respectively, will be accepted for whatever legal effect they may have, if any.

(d) *Forms.* (1) Each Statement of Account shall be furnished on an appropriate form prescribed by the Copyright Office, and shall contain the information required by that form and its accompanying instructions. Computation of the copyright royalty fee shall be in accordance with the procedures set forth in the forms. Copies of Statement of Account forms are available free upon request to the Licensing Division, United States Copyright Office, Library of Congress, Washington, DC 20557.

(2) The form prescribed by the Copyright Office is designated "Statement of Account for Secondary Transmissions by Satellite Carriers to Home Viewers."

(e) *Contents.* Each Statement of Account shall contain the following information:

(1) A clear designation of the accounting period covered by the Statement.

(2) The designation "Owner" followed by:

(i) The full legal name of the satellite carrier. If the owner is a partnership, the name of the partnership is to be followed by the name of at least one individual partner;

(ii) Any other name or names under which the owner conducts the business of the satellite carrier; and (iii) The full mailing address of the owner. Ownership, other names under which the owner conducts the business of the satellite carrier, and the owner's mailing address shall reflect facts existing on the last day of the accounting period covered by the Statement of Account.

(3) The designation "Primary Transmitters," followed by the call signs, broadcast channel numbers, station locations (city and state of license), and a notation whether that primary transmitter is a "super station" or "network station" transmitted to any or all of the subscribers of the satellite carrier during any portion of the period covered by the Statement of Account.

(4) The designation "Superstations," followed by:

(i) The call sign of each superstation signal carried for each month of the period covered by the Statement, and

(ii) The total number of subscribers to each superstation for each month of the period covered by the Statement. This number is the number of subscribers to each superstation receiving the retransmission on the last day of each month.

(5) The designation "Network Stations," followed by:

(i) The call sign of each network station carried for each month of the period covered by the Statement, and

(ii) The total number of subscribers to each network station for each month of the period covered by the Statement. This number is the number of subscribers to each network station receiving the retransmission on the last day of each month.

(6) The total number of subscribers to each superstation for the six-month period covered by the Statement multiplied by the statutory royalty rate of twelve (12) cents per subscriber (or in lieu thereof, the arbitrated rate, if applicable).

(7) The total number of subscribers to each network station for the six-month period covered by the Statement multiplied by the statutory royalty rate of three (3) cents per subscriber (or, in lieu thereof, the arbitrated rate, if applicable).

(8) The name, address, business title, and telephone number of the individual or individuals to be contacted for information or questions concerning the content of the Statement of Account.

(9) The handwritten signature of:

(i) The owner of the satellite carrier or a duly authorized agent of the owner, if the owner is not a partnership or a corporation; or

(ii) A partner, if the owner is a partnership; or

(iii) An officer of the corporation, if the owner is a corporation. The signature shall be accompanied by:

(A) The printed or typewritten name of the person signing the Statement of Account;

(B) The date of signature;

(C) If the owner of the satellite carrier is a partnership or a corporation, by the title or official position held in the

partnership or corporation by the person signing the Statement of Account;

(D) A certification of the capacity of the person signing; and

(E) The following statement:

I, the undersigned Owner or Agent of the Satellite Carrier, or Officer or Partner, if the Satellite Carrier is a Corporation or Partnership,
have examined this Statement of Account and hereby declare under penalty of law that all statements of fact contained herein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.
[18 U.S.C., section 1001 (1986)]

(f) *Royalty fee payment.* The royalty fee payable for the period covered by the Statement of Account shall accompany that Statement of Account, and shall be deposited at the Copyright Office with it. Payment must be in the form of a certified check, cashier's check, or money order, payable to: Register of Copyrights.

(g) *Corrections, supplemental payments, and refunds.* (1) Upon compliance with the procedures and within the time limits set forth in paragraph (g)(3) of this section, corrections to Statements of Account will be placed on record, supplemental royalty fee payments will be received for deposit, or refunds will be issued, in the following cases:

(i) Where, with respect to the accounting period covered by a Statement of Account, any of the information given in the Statement filed in the Copyright Office is incorrect or incomplete; or

(ii) Where calculation of the royalty fee payable for a particular accounting period was incorrect, and the amount deposited in the Copyright Office for that period was either too high or too low.

(2) Corrections to Statements of Account will not be placed on record, supplemental royalty fee payments will not be received for deposit, and refunds will not be issued, where the information in the Statements of Account, the royalty fee calculations, or the payments were correct as of the date on which the accounting period ended, but changes (for example, addition or deletion of a signal) took place later.

(3) Requests that corrections to a Statement of Account be placed on record, that fee payments be accepted, or requests for the issuance of refunds, shall be made only in the cases mentioned in paragraph (g)(1) of this section. Such requests shall be addressed to the Licensing Division of the Copyright Office, and shall meet the following conditions:

(i) The request must be in writing, must clearly identify its purpose, and, in the case of a request for a refund, must be received in the Copyright Office before the expiration of 30 days from the last day of the applicable Statement of Account filing period, as provided for in paragraph (c)(1) of this section. A telegraphic or similar unsigned communication will be considered to meet this requirement if it clearly identifies the basis of the request, if it is received in the Copyright Office within the required 30-day period, and if a written request meeting all the conditions of this paragraph (g)(3) is also received in the Copyright Office within 14 days after the end of such 30-day period:

(ii) The Statement of Account to which the request pertains must be sufficiently identified in the request (by inclusion of the name of the owner of the satellite carrier and the accounting period in question) so that it can be readily located in the records of the Copyright Office;

(iii) The request must contain a clear statement of the facts on which it is based, in accordance with the following requirements:

(A) In the case of a request filed under paragraph (g)(1)(i) of this section, where the information given in the Statement of Account is incorrect or incomplete, the request must clearly identify the erroneous or incomplete information and provide the correct or additional information:

(B) In the case of a request filed under paragraph (g)(1)(ii) of this section, where the royalty fee was miscalculated and the amount deposited in the Copyright Office was either too high or too low, the request must be accompanied by an affidavit under the official seal of any officer authorized to administer oaths within the United States, or a statement in accordance with section 1746 of Title 28 of the United States Code, made and signed in accordance with paragraph (e)(14) of this section. The affidavit or statement shall describe the reasons why the royalty fee was improperly calculated and include a detailed analysis of the proper royalty calculation.

(iv)(A) All requests filed under this paragraph (g) must be accompanied by a filing fee in the amount of $15 for each Statement of Account involved. Payment of this fee may be in the form of a personal or company check, or of a certified check, cashier's check or money order, payable to: Register of Copyrights. No request will be processed until the appropriate filing fees are received.

(B) All requests that a supplemental royalty fee payment be received for deposit under this paragraph (g) must be accompanied by a remittance in the full amount of such fee. Payment of the supplemental royalty fee must be in the form of certified check, cashier's check, or money order, payable to: Register of Copyrights. No such request will be processed until an acceptable remittance in the full amount of the supplemental royalty fee has been received.

(v) All requests submitted under this paragraph (g) must be signed by the satellite carrier owner named in the Statement of Account, or the duly authorized agent of the owner, in accordance with paragraph (e)(10) of this section.

(vi) A request for a refund is not necessary where the Licensing Division, during its examination of a Statement of Account or related document, discovers an error that has resulted in a royalty overpayment. In this case, the Licensing Division will forward the royalty refund to the satellite carrier owned named in the Statement of Account without regard to the time limitations provided for in paragraph (g)(3)(i) of this section.

(4) Following final processing, all requests submitted under this paragraph (g) will be filed with the original Statement of Account in the records of the Copyright Office. Nothing contained in this paragraph shall be considered to relieve satellite carriers from their full obligations under Title 17 of the United States Code, and the filing of a correction or supplemental payment shall have only such effect as may be attributed to it by a court of competent jurisdiction.

(h) *Interest.* (1) Royalty fee payments submitted as a result of late or amended filings will include interest. Interest will begin to accrue beginning on the first day after the close of the period for filing statements of account for all underpayments or late payments of royalties for the satellite carrier statutory license for secondary transmissions for private home viewing occurring within that accounting period. The accrual period will end on the date appearing on the certified check, cashier's check, or money order submitted by a satellite carrier, provided that such payment is received by the Copyright Office within five business days of that date. If the payment is not received by the Copyright Office within five business days of its date, the accrual period will end on the date of actual receipt by the Copyright Office.

(2) The interest rate applicable to a specific accounting period will be

determined by reference to the interest rate paid by the United States Treasury on the first investment of royalty fees made by the Copyright Office with the Treasury after the close of that accounting period. The interest rate paid by the Treasury for a particular accounting period may be obtained by contacting the Licensing Division of the Copyright Office.

(3) Interest is not required to be paid on any royalty underpayment from a particular accounting period if the sum of that underpayment is less than or equal to five dollars ($5.00).

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 89–15590 Filed 6–30–89; 8:45 am]

BILLING CODE 1410–08–M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 31 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1.

Most of the revisions are minor, editorial, or clarifying. Substantive changes, such as an optional new claims sampling procedure for mailers who file large numbers of COD claims annually, the revised regulations on reevaluating a publication's eligibility for second-class rates when considering an application to reenter the publication with a new title, a different office of publicaiton, or a different frequency of issuance, and the revised regulations on paper stock requirements for business reply cards processed under the automated Business Reply Mail Accounting System, have previously been published in the **Federal Register.**

EFFECTIVE DATE: June 18, 1989.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 268–2960.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 31, dated June 18, 1989. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal letter for issue 31 covers the minor changes not previously described in interim or final rules published in the **Federal Register.**

Summary of Changes

In Chapter 1, *First-Class mail,* section 122.15, *Return Address,* is revised to no longer require the name of the sender unless it is specifically prescribed elsewhere in the DMM. Also, in 122.17, *Endorsements,* the word *full* is deleted from the second sentence and other text is added to sections 122.32 and 122.35 to accommodate this revision. These changes are made to permit senders to omit their names as part of their return addresses and to ease compliance with the provisions of the Federal Fair Debt Collection Practices Act that pertains to mail sent by debt collection agencies (PB 21716, 3–16–89).

Section 122.412, *City Routes and Post Office Boxholders,* is revised to include in its provisions the governments of United States territories and possessions listed in 111.2a. This revision will permit use of the simplified address by the governments of Guam, U.S. Virgin Islands, and others in 111.2a not previously included in 122.412 (PB 21723, 5–4–89).

Sections 122.422 and 153.11, Exhibit 159.14, and, in Chapter 4, sections 423.121, 423.122, 423.125, 423.421 and 472.2 are revised to clarify the use of exceptional forms of address, to specifically provide that certain second-class mail may bear an exception form of address, and to provide instructions concerning the provision of address correction service for such second-class mail.

Section 122.422 is revised to clarify when a mailer may use an exceptional form of address and the consequences of such use. Revised sections 122.422, 423.121, 423.125, and 423.421 make clear that copies of second-class publications may be distributed with an exceptional form of address if they are not counted as subscriber or requester copies. Such addressing is inconsistent with the concept that subscriber/requester copies are sent to persons who have voluntarily chosen to subscribe to (or request delivery of) the publication. Continued receipt of the publication after a customer move is a critical element in demonstrating that voluntary undertaking. For that reason, the Postal Service provides 60 days of free forwarding followed by the issuance of an address correction notice to the publisher to ensure that subscribers/requesters who move will continue to receive their second-class publications.

The address correction clarification for second-class mail is needed because mail bearing an exceptional address format may not normally carry postal endorsements for ancillary services, including mailer requests for the reason for nondelivery, yet that service is mandatory for second-class mail. The revisions to section 122.422 and Exhibit 159.14 make it clear that publishers who mail copies of second-class publications bearing an exceptional form of address will only receive information pertaining to the reason for nondelivery when those copies are undeliverable as addressed because of reasons other than a customer move.

Examples of such instances are when a building has been razed or the address in question is vacant (PB 21721, 4–20–89).

In section 137.252, *Agency Authorization Codes,* the agency code listing showing permit imprint number, business reply mail permit number and sampling (RPW) number is updated.

In part 143, *Precanceled Stamps,* section 143.177, *Return Address,* is revised to allow pieces bearing precanceled stamps to be endorsed *Mailed from ZIP Code,* followed by the ZIP Code assigned to the postmaster of the office of mailing, when the return address on the mailpieces is not within the delivery area of the post office of mailing. (PB 21719, 4–6–89).

* * * * *

Section 159, *Undeliverable Mail,* is revised to incorporate revised procedures for handling Express Mail, small quantities of dead mail, and post or postal cards. Specifically, section 159.47 is changed to: (1) provide for sending dead Express Mail service shipments by Express Mail service through the management sectional center Express Mail service office to attempt to locate the addressee before sending it to the dead mail branch; (2) allow post offices to dispose of undeliverable postcards and postal cards, that are not sealed against inspection, without forwarding them to dead letter offices; and (3) allow for the consolidation of small quantities of First-Class Mail being sent to dead letter offices through sectional center facilities (PB 21719, 4–6–89).

Mailer endorsements in Exhibits 159.151a, 159.151c, and 159.151d, regulating treatment of undeliverable Express Mail and First-Class Mail and third-class bulk business mail are revised to clarify the interpretation of allowable mailer endorsements. No substantive change has been made (PB 21721, 4–20–89).

In Chapter 2, part 226 *Express Mail Military Service,* is revised to include three-day service, Custom Designed, and Drop Shipment options (PB 21722, 4–27–89).

* * * * *

Sections 429.13 and 429.161 are revised to clarify that it is permissible for publishers of second-class publications to include printed matter relating exclusively to receipts and orders for subscriptions as part of those receipts and orders (PB 21721, 4–20–89).

Section 441.232b(2), *Clean Address Required,* is revised to recommend, rather than require, that a blank line be left between the address block and the optional endorsement line (PB 21723, 5–4–89).

In Chapter 6, *Third-Class Mail,* section 622.3 is revised. In addition to encouraging mailers of bulk third-class matter to combine their mailings whenever possible, the revision will clearly describe the restrictions that apply to such merged mailings so that both mailers and postal employees will know the appropriate requirements (PB 21719, 4–6–89).

Sections 667.131, 667.321, and 667.42 are revised to clarify that mailers must prepare sacks whenever there are either 125 pieces *or* 15 pounds of mail, *whichever occurs first* (PB 21719, 4–6–89).

In Chapter 7, *Fourth-Class Mail*, section 723.3 is revised to make it clear that any printed matter which would be mailable as third-class mail, whether advertising or nonadvertising, can be enclosed with bound printed matter (PB 21719, 4–6–89).

* * * * *

In section 917.527e, the word *negatives* is deleted because the Postal Service no longer provides negatives, only positives for printing the FIM pattern and barcode.

In part 940, *Money Orders*, section 941.152a(3) is revised by the addition of a sentence stating that each clerk must identify and submit the spoiled money orders as a separate group to a verifying manager or designated employee, who must then destroy the spoiled money orders (PB 21717, 3–23–89).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of § 111.3(e) is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter for issue	Dated	Federal Register publication
*	*	*
31	June 18, 1989	54 FR . . .

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89–15618 Filed 6–30–89; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3610–8]

Approval and Promulgation of State Implementation Plans; Colorado, Utah and Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is today acknowledging the clarifications, from the States of Colorado, Utah and Wyoming, of the generalized language in their regulations pertaining to modeling. Colorado, Utah and Wyoming have clarified that the generalized language in their regulations means that prevention of significant deterioration (PSD) reviews will utilize the "guidelines on air quality models (revised)," (1986) EPA 450/2–78–027R, and Supplement A (1987) to the revised guidelines.

DATES: This action will become effective on September 1, 1989 unless notice is received by August 2, 1989 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the revisions are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2405

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2405, (303) 293–1814, FTS 564–1814.

SUPPLEMENTARY INFORMATION: Section 165(e)(3)(D) of the Clean Air Act (Act) requires the Administrator to adopt regulations specifying, with reasonable particularity, models to be used to comply with the Act's PSD requirements. To carry out these requirements, the 1978 "Guidelines on Air Quality Models" was incorporated by reference into 40 CFR 51.24 (now renumbered 51.166) and 40 CFR 52.21. On September 9, 1986 (51 FR 32176), EPA promulgated amendments to 40 CFR 51.24 (now 51.166) and 52.21 to substitute by reference the "Guidelines on Air Quality Models (Revised)," (1986) EPA 450/2–78–027R, in these regulations. EPA promulgated amendments to 40 CFR 51.166 and 52.21 to add Supplement A (1987) to the "Guidelines on Air Quality Models (Revised) (1986)" on January 6, 1988 (53 FR 392). This means that all modeling done pursuant to the PSD requirements must either comply with the 1986 version of the modeling guideline and Supplement A (1987) or be specifically approved by EPA; modeling done pursuant to the 1978 guidelines may no longer be accepted.

A review of the Colorado, Utah and Wyoming PSD regulations categorized these States as ones which regulations did not specifically preclude them from using the revised modeling guidelines, i.e., their regulations were written in a generalized manner so as not to specify any particular year or version of the modeling guidelines.

Colorado, Utah and Wyoming were asked to submit a letter of interpretation clarifying that the generalized language in their regulations now means that all PSD permit reviews will comply with the use of the above revised guideline models or models otherwise approved by EPA. Colorado, Utah and Wyoming submitted such letters of interpretation on May 22, 1987, May 26, 1987, and May 27, 1987, respectively.

Subsequent to the States submitting the above-mentioned interpretation letters, EPA promulgated Supplement A (1987) to the "Guidelines on Air Quality Models (Revised) (1986)" on January 6, 1988 (53 FR 392). Supplement A adds four models to the modeling guidelines.

Because Colorado, Utah, and Wyoming's previous letters of interpretation were specific enough to mention only the revised guidelines and were not flexible enough to permit EPA to assume that Supplement A (1987) would also be utilized in PSD permit reviews, EPA requested these States to submit another letter of interpretation clarifying the generalized language in their regulations. That is, such letters were to clarify that the generalized language means that all PSD permit reviews will comply with the 1986 revised modeling guidelines and Supplement A (1987) or other models otherwise approved for use by EPA. Colorado, Utah and Wyoming submitted such letters of interpretation on May 19, 1989, May 26, 1989, and May 18, 1989, respectively. In the Colorado letter of interpretation, the State indicated any future revisions (including appendices or supplement) will be incorporated into the Air Pollution Control Division's protocol for reviewing modeling for PSD permits. In the Utah letter of interpretation, the State indicated that it would also utilize any future supplements to the "Guidelines on Air Quality Models (Revised)" approved by EPA. In the Wyoming letter of interpretation, the State indicated that it would utilize any future revisions to the Guideline in PSD permitting reviews as revisions become effective.

Final Action

EPA is acknowledging the clarifications, from the States of Colorado, Utah and Wyoming, of the

generalized language in their regulations pertaining to modeling. EPA has determined that Colorado, Utah and Wyoming will utilize the "Guidelines on Air Quality Models (Revised)," (1986) EPA 450/2–78–027R, Supplement A (1987), and any future revisions or supplements to the revised Guidelines, when reviewing PSD permits.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of the Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another notice will begin rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 1, 1989.

EPA finds good cause for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation and EPA's approval poses no additional regulatory burden.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 1, 1989. This action may not be challenged later in proceedings to enforce its requirement [see Act section 307(b)(2)].

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control.

Date: June 15, 1989.

Jack McGraw,

Acting for the Regional Administrator.

Part 52 Chapter I, Title 40 of the *Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7462.

Subpart G—(Colorado)

2. Section 52.343 is amended by adding paragraph (c) as follows:

§ 52.343 significant deterioration of air quality.

* * * * *

(c) The State of Colorado has clarified the generalized language contained in the Colorado Air Quality Control Regulations on the use of "applicable air quality models." In a letter to Douglas M. Skie, EPA, dated May 19, 1989, Bradley J. Beckham, Director of the Air Pollution Control Division stated:

* * * All PSD permits reviewed by the Division will use the revised modeling guideline mentioned above [Guideline on Air Quality Models (Revised), EPA 450/2–78–027R including Supplement A (July 1987)] for determining if the air quality models, data bases, and other requirements are generally approved by EPA. Any future revisions (including appendices or supplement) will be incorporated into the Division's protocol for reviewing modeling for PSD permits.

Subpart TT—(Utah)

3. Section 52.2346 is amended by adding paragraph (c) as follows:

§ 52.2346 Significant deterioration of air quality.

* * * * *

(c) The State of Utah has clarified the generalized language contained in the Utah Air Conservation Regulations on the use of the "Guidelines on Air Quality Models." In a letter to Douglas M. Skie, EPA, dated May 26, 1989, F. Burnell Cordner, Director of the Bureau of Air Quality stated:

* * * The language in section 3.7 of the Utah Air Conservation Regulations on the use of "Guidelines on Air Quality Models" means that all PSD permit reviews will comply with the use of the "Guideline on Air Quality Models (Revised)", EPA 450/2–78–027R, and any future supplements approved by EPA.

Subpart ZZ—(Wyoming)

4. Section 52.2630 is amended by adding paragraph (c) as follows:

§ 52.2630 Prevention of significant deterioration of air quality.

* * * * *

(c) The State of Wyoming has clarified the generalized language contained in section 24 of the Wyoming Air Quality Standards and Regulations on the use of the "Guidelines for Air Quality Models." In a letter to Douglas M. Skie, EPA, dated May 18, 1989, Charles A. Collins, Administrator of the Air Quality Divisions stated:

* * * The Division, will, as a matter of practice, utilize the "Guideline on Air Quality Models" as revised, including Supplement A, in all PSD permit application reviews. The Division will utilize any future revisions to the Guideline in PSD permitting reviews as revisions become effective.

[FR Doc. 89–15556 Filed 6–30–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192, 193, and 195

[Docket No. PS–108, Amdt. No. 192–64, 193–6, and 195–41]

RIN 2137–AB68

Incorporation by Reference of Portions of American Petroleum Institute Standard 1104, Seventeenth Edition, 1988

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Final rule.

SUMMARY: This amendment updates to the 17th edition (1988) the existing incorporation by reference in the Federal pipeline safety standards of the American Petroleum Institute (API) Standard 1104, "Standard for Welding Pipelines and Related Facilities." The amendment makes no significant substantive change to those standards, but requires operators to use applicable provisions of the latest published edition of API Standard 1104.

EFFECTIVE DATE: This final rule becomes effective August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Lloyd Ulrich, (202) 366–1640 regarding changes on safety standards, or the Dockets Unit, (202) 366–5046 for copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

RSPA's safety standards for pipelines transporting gas or hazardous liquids and for LNG facilities incorporate by reference certain requirements of API Standard 1104. The gas pipeline safety standards in Part 192 incorporate by reference sections 3 and 6 of API Standard 1104 as standards for welder qualification (§§ 192.227 and 192.229) and section 6 as a weld acceptability standard (§ 192.241). In Part 193, which governs LNG facilities, certain welding procedures and welders must be qualified under API Standard 1104

(§ 193.2313), and certain weld defects and weld repair must meet API Standard 1104 criteria (§ 193.2321). With regard to the hazardous liquid pipeline safety standards in Part 195, section 3 of API Standard 1104 is referenced for welder qualification (§ 195.222), and the acceptability of welds must be determined under section 6 (§ 195.228).

The 1980 edition (15th edition) of API Standard 1104 is the latest edition referenced in Parts 192 and 195 as indicated by the listing in Appendix A to Part 192 and the listing in § 195.3. In Part 193, the 14th edition (1977) is the latest referenced, as indicated by Appendix A to Part 193. These editions have been superseded by the 17th edition (1988).

The following compares applicable provisions of the 17th edition with editions now referenced:

Section 2, concerning the qualification of welding procedures, has three revisions. The first clarifies that grinding is covered by the procedural requirement governing weld cleaning. The second clarifies that the width of tensile test specimens is not a precise dimension and may be approximately 1 inch. Finally, a clearer description is provided of acceptable bend test results.

The revisions to section 3 are minimal, and do not significantly affect the technological aspects of this welder qualification section. One revision specifically clarifies that for single qualification, a welder can make a butt weld either in the rolled or in the fixed position. Another revision to section 3 clarifies that a welder who passes a single qualification butt weld test in the fixed position with the axis inclined 45° from the horizontal plane is qualified to do butt welds in all positions.

Section 6, which provides acceptance standards for weld defects, was reorganized to eliminate possible confusion over which of the weld acceptance standards apply to each method of nondestructive testing: radiography, magnetic particle liquid penetrant, ultrasonic, and visual. A possible interpretation of the previous section 6 was that all the acceptance standards applied to all the methods of nondestructive testing, whereas methods other than radiography are incapable of detecting all the defects covered by the standards.

The only change to section 7, concerning the repair and removal of weld defects, adds a cross reference to the Appendix-Alternative Acceptance Standards for Girth Welds, which is not covered by this rulemaking, as discussed below.

On November 30, 1988, API petitioned RSPA to update to the 17th edition (1988) the references to API Standard 1104 P-38). API requested that in updating these references operators be permitted to use a fracture mechanics model set forth in an Appendix to the document as an alternative girth weld acceptance standard. The petition contains a report on the results of research API conducted to address safety concerns RSPA previously had raised about use of the model.

RSPA has reviewed API's petition, but believes that the fracture mechanics model cannot be adopted as a Federal alternative weld acceptance standard without first providing an opportunity for public comment. Thus, the Appendix to the 17th edition is the subject of a notice of proposed rulemaking scheduled for publication later this year.

The present rulemaking is intended to update to the 17th edition, except for the Appendix, the references to applicable provisions of API Standard 1104 in Parts 192, 193, and 195. Parts 192 and 195 refer to sections 3 and 6 of API Standard 1104, and these sections do not cross reference the Appendix. For these parts, the update is accomplished merely by adding "1988" in the place of "1980" in the appropriate listing in Appendix A to Part 192 and in § 195.3. In Part 193, applicable provisions of API Standard 1104 are not referenced by section number. Thus, for the Part 193 update, section II D.2. of Appendix A to Part 193 is being amended to except the Appendix to the 17th edition. As a result, where section 7 of the 17th edition of API Standard 1104 cross references the Appendix as an alternative method to dispose of weld cracks, this method is not permitted under Part 193.

Because incorporation by reference of applicable provisions of the 17th edition of API Standard 1104 would not make any significant changes to any of the substantive requirements of Parts 192, 193, and 195, RSPA has determined that notice and public procedure are unnecessary. Therefore, in accordance with 5 U.S.C. 553, the amendment is final.

The amendment will have an effect on the economy of less than $100 million a year, will result in a cost savings to consumers and industry, and will have no adverse effects. Hence, this action is not considered "major" under Executive Order 12291; nor is it "significant" under DOT procedures.

RSPA has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant preparing a Federalism Assessment.

List of Subjects

49 CFR Part 192

Incorporation by reference, Pipeline safety, Steel pipe, Welding.

49 CFR Part 193

Incorporation by reference, LNG facilities, Pipeline safety, Welding, Tests.

49 CFR Part 195

Incorporation by reference, Pipeline safety, Steel pipe, Welding.

In consideration of the foregoing, Parts 192, 193, and 195 of Title 49 of the Code of Federal Regulations are amended as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; and 49 CFR 1.53.

Appendix A—[Amended]

2. In section II.A. of Appendix A, of Part 192 item (8) is amended by removing "(1980)" and adding in its place "(17th edition, 1988)."

PART 193—[AMENDED]

3. The authority citation for Part 193 is revised to read as follows:

Authority: 49 App. U.S.C. 1671 *et seq.*; and 49 CFR 1.53.

Appendix A [Amended]

4. In Section II.D. of Appendix A to Part 193, item 2 is amended by removing "(14th edition, 1977)" and adding in its place "(17th edition, 188, except the Appendix)."

PART 195—[AMENDED]

5. The authority citation for Part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2002; and 49 CFR 1.53.

§ 195.3 [Amended]

6. Section 195.3(c)(1)(ii) is amended by removing "(1980)" and adding in its place "(17th edition, 1988)."

Issued in Washington, DC on June 26, 1989.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 89-15435 Filed 6-30-89; 8:45 am]

BILLING CODE 4910-60-M

Proposed Rules

Federal Register
Vol. 54, No. 126
Monday, July 3, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-89-009]

Tobacco Inspection; Fees and Charges for Inspection and Grading of Imported Tobacco

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Tobacco Adjustment Act of 1983, as amended requires the Secretary of Agriculture to fix and collect fees and charges for the inspection and grading of all tobacco offered for importation into the United States, except cigar and oriental tobacco. This proposal would increase the fees charged to importers. The increased fees are necessary in order to cover the Department's costs of providing services under the Act.

DATE: Comments are due on or before August 2, 1989.

ADDRESS: Send comments to the Director, Tobacco Division, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Comments will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ernest Price, Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456. Telephone (202) 447-2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department proposes to amend the regulations governing the inspection of all imported tobacco, except cigar and oriental tobacco, to increase the fees for grading. The fee increase is necessary to cover the cost of providing the service, including administrative and supervisory costs. The authority for this proposed regulation is contained in the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r).

Imported tobacco is inspected for grade and quality using the same standards applied to tobacco marketed through a warehouse in the United States. Fees are assessed to cover the cost of providing this grading service. The fee for grading imported tobacco has been $.0035 per pound since 1984.

The Department proposes to increase the fee to $.0040 per pound. This fee was determined after an annual review and analysis was conducted of the financial status of the program. The major factors generating the need for additional funds are increases in salaries, travel allowances and overall administrative costs since 1984.

This proposed rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "nonmajor" because it does not meet any of the criteria established for major rules under the Executive Order.

Additionally, in conformance with the provisions of Pub. L. 96-354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact on small business. Few, if any, of the firms which would be affected by this proposed regulation are small businesses. The Administrator, Agricultural Marketing Service, has determined that this action would have no significant economic impact upon any entity, small or large, and would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this revision would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and it would not alter the market share or competitive positions of small entities relative to large entities. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

All persons who desire to submit written data, views, or arguments for consideration in connection with this proposal may file them with the Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, not later than August 2, 1989.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Tobacco.

Accordingly, the Department proposes to amend the regulations in 7 CFR Part 29, Subpart B, as follows:

PART 29—[AMENDED]

1. The authority citation for Part 29, Subpart B, continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

Subpart B—Regulations

2. In § 29.500, paragraph (a) is revised to read as follows:

§ 29.500 Fees and Charges for Inspection and Testing of Imported Tobacco.

(a) The fee for inspection of imported tobacco is $.0040 per pound, and shall be paid by the importer. This inspection fee applies to all tobacco imported into the United States except as provided in § 29.400. Fees for services rendered shall be remitted by check or draft in accordance with a statement issued by the Director, and shall be made payable to "Agricultural Marketing Service".

* * * * *

Dated: June 27, 1989.

Kenneth C. Clayton,
Acting Administrator.

[FR Doc. 89-15596 Filed 6-30-89; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1762

Standard Forms of Telecommunications Contracts, Revision of REA Contract Form 515, Telephone System Construction Contract, Labor and Materials

AGENCY: Rural Electrification Administration, USDA

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR Part 1762. The purpose of amending 7 CFR Part 1762 is to announce a general revision of REA Contract Form 515, Telephone System

Construction Contract, Labor and Materials. The Contract Form 515 associated specifications are: REA Forms 515a, REA Specifications and Drawings for Construction of Direct Buried Plant (REA Bulletin 345–150); 515c, REA Specifications and Drawings for Conduit and Manhole Construction (REA Bulletin 345–151); 515d, REA Specifications and Drawings for Underground Cable Installation (REA Bulletin 345–152); 515f, REA Specifications and Drawings for Construction of Pole Lines and Aerial Cables (REA Bulletin 345–153); and 515g, REA Specifications and Drawings for Service Entrance and Station Protector Installation (REA Bulletin 345–154). These associated specifications are listed in 7 CFR Part 1772.

REA Contract Form 515 and its associated specifications were last revised in September 1979. Since that date, the telephone industry, construction materials, engineering designs and procedures, testing requirements, and construction methods have all changed significantly. The 515 forms need revision to incorporate these changes into the outside plant contract and specifications. The main changes to the contract proposed are the addition of new construction units for (1) buried filled fiber optic cable, (2) aerial filled fiber optic cable, (3) aerial filled cable, (4) fiber optic splicing, (5) network interface devices, (6) handholes, (7) underground fiber optic cable, and (8) insurance and bonding requirements. Proposed changes in the specifications will be covered in individual **Federal Register** Notices referenced to their respective REA bulletin listed in 7 CFR Part 1772. This action will make it possible for REA telephone borrowers to continue to provide their subscribers with the most modern and efficient telephone service.

DATE: Public comments must be received by REA no later than September 1, 1989.

ADDRESS: Submit written comments to William F. Albrecht, Director, Telecommunications Staff Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. Copies of the documents are available upon request from the above address. All written submissions made pursuant to this action will be made available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Garnett G. Adams, Chief, Outside Plant Branch, Telecommunications Staff Division, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8667. The Draft Impact Analysis describing the options considered in developing this proposed rule is available on request from the above mentioned individual.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The proposed rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1980 as amended. Existing requirements were approved by the Office of Management and Budget (OMB) under clearance number 0572–0062.

Background

REA has issued a series of 7 CFR Chapter XVII Parts which serve to implement the policies, procedures, and requirements for administering its loan and loan guarantee programs and the security instruments which provide for and secure REA financing. The purpose of the proposed revision to 7 CFR Part 1762 is to announce revisions of the Telephone System Construction Contract, Labor and Materials, REA Form 515. Revisions to 7 CFR Part 1772 will be published to revise the contract's associated specifications: REA Form 515a, covering the construction of direct buried plant; REA Form 515c, setting forth requirements for conduit and manhole construction; REA Form 515d, the specifications and drawings for underground cable installations; REA Form 515f, the specifications and drawings for construction of pole lines and aerial cable; and REA Form 515g, the specifications and drawings for service entrance and station protector installation. The 7 CFR Part 1762 also provides information as to where copies of the contract may be obtained and the price per copy, where applicable. REA Form 515 is a labor and materials contract wherein the contractor furnishes all labor and materials required for the construction of telephone outside plant facilities. REA telephone borrowers are required to use the Form 515 contract where major outside plant facilities are being constructed by the contract method. Since the current contract was issued in 1979, new construction materials, such as fiber optic cable, filled aerial cable, and network interface devices, have been introduced. These new materials require new construction and installation specifications. There are also changes that have been made in testing and grounding requirements and construction techniques. All these proposed additions and changes need to be made so that REA telephone borrowers can continue to provide their subscribers with the most up-to-date and efficient telephone service.

List of Subjects in 7 CFR Part 1762

Loan programs—communications, Telecommunications, Telephone.

In view of the above, REA is proposing to amend 7 CFR Part 1762 by issuing revised Form 515.

PART 1762—[AMENDED]

1. The authority cited for Part 1762 is revised to read as follows, and all authorities following the sections are removed.

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

2. The table in § 1762.01 would be amended by revising the entry for REA Form 515 to read as follows:

§ 1762.01 List of standard forms of telecommunications contracts.

* * * * *

515	2-89	Telephone System Construction (Labor and Material).	Contract	Telephone outside plant construction, including direct buried plant, conduit and manholes, underground cable, pole lines, aerial cable, service entrances and station protector.	Supt. of Doc., GPO, Wash., DC 20402 [2]

* * * * *

Dated: May 8, 1989.

Jack Van Mark,

Acting Administrator.

[FR Doc. 89-15595 Filed 6-30-89; 8:45 am]

BILLING CODES 3410-15-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561, 563

[No. 89-1632]

RIN 3068-AA73

Regulatory Capital Requirements for Insured Institutions

Date: June 22, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Advance supplemental notice of proposed rulemaking.

SUMMARY: The Federal Home Loan Bank Board (the "Board") is today publishing for comment a description of proposed methodologies to be used in calculating the interest-rate-risk component of its recently proposed new regulatory capital requirements. Following receipt and consideration of public comments, the Board intends that this advance supplemental notice of proposed rulemaking will be followed by a notice of proposed rulemaking regarding amendments to the new risk-based capital regulations that will set forth the complete, detailed formulas and assumptions to be used in calculating the interest-rate-risk component of the capital requirement for each institution.

DATE: Comments must be received on or before August 2, 1989.

ADDRESS: Send comments to: Director, Information Services Division, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at Information Services, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Robert Fishman, Senior Policy Analyst, (202) 331-4592; John Robinson, Managing Director, (202) 331-4587; Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street, NW., Washington, DC 20006; Donald Bisenius, Director, Financial Analysis Division, (202) 906-6759, Office of Policy and Economic Research; Andrew Gilbert, Attorney, (202) 906-6441; Theresa Stark, Attorney, (202) 906-7054; Deborah Dakin, Regulatory Counsel, (202) 906-6445; Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On December 23, 1988, the Board proposed to revise its regulations establishing capital requirements for thrift institutions. *See* 53 FR 51800 (Dec. 23, 1988). The proposed rule would establish risk-based capital requirements that ensure that institutions maintain the level of capital necessary for safe and sound operation. The proposal would set an institution's minimum required level of capital as the sum of three elements, with one component based on each of the following: credit risk, interest-rate risk, and collateralized borrowings.

The Board is proposing to incorporate an interest-rate-risk ("IRR") component based on a methodology that is superior to the method it has used heretofore to account for interest-rate risk in setting capital requirements. The new IRR component would replace the existing maturity-matching credit; this maturity gap technique was itself incorporated into the capital rules in 1986 as an evolutionary improvement over the original "qualifying balance deduction" that the Board had first used in 1980 to account for interest-rate risk. The proposed new IRR component relies on a methodology that would measure such risk based upon the institution's entire portfolio, rather than looking to just a specified list of assets during a particular time frame. *See* 53 FR at 51809-10.

The Board is today publishing for comment proposed methodologies to be used in calculating the interest-rate-risk exposure component of the proposed risk-based capital rule. A presentation of these possible methodologies is contained in Appendix A to this notice.

Discussion

Under proposed new § 563.13(c)(1)(ii), an institution's minimum regulatory capital requirement would incorporate a component equal to fifty percent of its interest-rate-risk exposure, as measured on the basis of the estimated potential decline in its market value of portfolio equity ("MVPE"). An institution's MVPE equals the aggregate market value of all its on- and off-balance sheet financial instruments; *i.e.*, the market value of assets, minus the market value of liabilities, plus the net market value of off-balance sheet items. The market value of a financial instrument changes as market interest rates change, and the greater the sensitivity of an instrument's market value to interest-rate changes, the greater is the interest-rate risk inherent in that instrument. Since, for most financial institutions, the value of the portfolio of financial instruments accounts for the predominant portion of the institution's total market value, a measurement of the MVPE sensitivity provides an excellent measure of the institution's exposure to interest-rate changes.[1]

In particular, proposed § 563.13(e) defines an institution's IRR exposure as the estimated decline in its MVPE that would result from an immediate and sustained 200 basis-point increase or decrease in interest rates. The proposed rule then prescribes the use of a discounted cash flow analysis in estimating the risk of decline in the institution's value; *i.e.*, the estimated decline in the MVPE will equal the present value of the change in present and future earnings that is projected to result from a sustained 200 basis-point change (up or down) in interest rates. These estimates will be based on the information reported by each institution regarding the outstanding balances, maturities, and interest rates for assets, liabilities and off-balance sheet items. For the purpose of better monitoring IRR sensitivity, section H of the Thrift Financial Report, which provides a quarterly snapshot of the institution's portfolio, was recently revised to expand and improve the quality of information tracked and reported by all institutions.[2]

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[1] The Board is aware that there may be scenarios in which the interplay of the proposed interest-rate-risk calculation and the Board's policy statement in "Investment Portfolio Policy and Accounting Guidelines," Board Res. No. 89-1480, 54 FR 23457 (June 1, 1989), may cause an institution's regulatory capital requirement to increase while the value of its assets falls. We believe this is appropriate since the proposed interest-rate-risk calculation changes the capital requirement in response to the risk of future interest-rate movements and the impact on the institution. The Investment Portfolio Policy and Accounting Guidelines address the measurement of the interest-rate movements on past operations and does not reflect the potential impact of future interest-rate movements.

[2] The revised section H is effective for the quarter beginning April 1989 (*i.e.*, for the June 30, 1989 Thrift

Continued

The assumptions underlying the present value formulas that would be applied to these Section H portfolio values in calculating IRR exposure are important factors in the proposed new risk-based capital requirements. These assumptions cover such items as amortization schedules, repricing dates, discount rates, and the treatment of options (particularly prepayments on loans, call provisions for investments, period and lifetime caps on adjustable rate mortgages, and the effective lives of deposits with no specified maturity).[3] Fairly broad assumptions will also have to be made about the characteristics of reported off-balance sheet instruments and some investment securities (notably, mortgage derivatives).

In its proposal, the Board stated its intention to publish for public comment the guidelines containing instructions and possible methodologies (including necessary assumptions) to be used in calculating IRR exposure. As part of its general program of addressing interest-rate risk, the Board's staff has been devoting considerable resources to the evaluation and management of interest-rate risk, drawing upon the more sophisticated tools that are today available to the industry. A significant step in this program was the recent publication of Thrift Bulletin 13 ("TB 13") by the Board's Office of Regulatory Activities.[4]

TB 13 describes internal policies and practices that supervisory staff will expect institutions to use in order to comply with existing regulations requiring directors and officers to manage interest-rate risk. Among other things, this will require estimation of the sensitivity of MVPE to increases and decreases in interest rates ranging from 100 to 400 basis points. The Board's staff is charged with devising, and improving on an ongoing basis, the methodologies and assumptions to be used in these calculations.[5] The Board contemplates using these same assumptions (applied specifically to a hypothetical 200 basis-point interest-rate change) in calculating the IRR component of an institution's regulatory capital requirement under proposed new § 563.13(e).

The Board is today publishing for comment, as Appendix A to this notice, the alternative methodologies and major assumptions that are under consideration for the calculation of IRR exposure using the MVPE approach. As discussed above, the sensitivity of an institution's MVPE will be calculated from data reported on section H of the most recent quarterly Thrift Financial Report. Although no actual market values are contained in section H, the information on revised Section H will permit the Board to estimate the sensitivity of MVPE to interest rates. Immediately following is a summary discussion of the MVPE methodology being considered for use in the development of those estimates, with particular attention to discounted cash flow analysis and the treatment of embedded options in such valuation.

Interested persons are urged to review and comment on Appendix A which contains a detailed presentation of alternative MVPE methodologies for each of the groups of line items reported on section H. Moreover, while general comments are welcome, various specific issues are noted for public comment throughout the Appendix A discussion.

Following receipt of public comment on this advance supplemental notice of proposed rulemaking, the Board will publish a notice of proposed rulemaking containing the complete exposition of the detailed algorithms and assumptions that will be used to calculate the interest-rate-risk component of the risk-based capital requirement. Based upon the administrative record generated by the entire rulemaking, the methodology will be published in final form as an amendment to the final risk-based capital regulation, either directly or through incorporation by reference of supervisory directives setting forth the methodology. The Board intends that public notice will be given in the **Federal Register** as ongoing changes and improvements are made to the MVPE methodology.

Summary Presentation of MVPE Methodology

As proposed, new § 563.13(e) would prescribe the use of a present value cash flow analysis in estimating the sensitivity of MVPE to changes in interest rates. The market value of a financial asset can be measured as the present value of its cash flows. This cashflow analysis will be used to value the institution's assets, liabilities, and off-balance sheet instruments. The discounted present value of all expected cash inflows and outflows will be used to determine the aggregate market value of portfolio equity under specified interest-rate scenarios.

Different instruments in an institution's portfolio will generate different cash flow patterns. Before performing the discounting calculations, the model now being developed will first approximate an institution's individual cash flows based on its Section H data. Assumptions will be made about the cash flow characteristics of each line item on the report under the various interest-rate scenarios. For example, mortgages will be assumed to be amortizing loans. Thus, their principal and interest flows will be estimated on the basis of the balances, remaining maturities, interest rates, and—in the case of ARMs—repricing characteristics that are reported for that line item in Section H.

Some degree of aggregation error is inevitable given the limitations of the data collected. In particular, although the reporting form has been organized to group together instruments with similar cash flow patterns, a single reporting line might still combine instruments with differing cash flow characteristics and discount rates.[6] Significant differences in cash flow characteristics among items reported in a single line will cause some inaccuracies in the modeling results. More detailed reporting requirements would diminish potential inaccuracies in the cash flow estimations and, ultimately, in the model's aggregate MVPE estimations. Some compromise, however, is unavoidable between the goal of maximizing estimation accuracy and minimizing the concomitant reporting burdens to the industry. Adjustments and modifications to that compromise, as well as improvements in cash flow assumptions, are anticipated

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Financial Report.) The Board anticipates that further improvements in the quality of information will be made as experience is gained with the calculation and monitoring of IRR exposure. For ease of reference, a copy of the new Section H is attached as Appendix B to this notice. Interested persons may contact Board staff to obtain copies of the extensive instructions to Section H.

[3] Among other things, the Board's December proposal specifically requested comments on whether assumptions should be based on regional or national data, whether adjustments should be made to reflect prior interest-rate shifts, and the extent to which institutions may or should provide their own assumptions. *See* 53 FR at 51811.

[4] Thrift Bulletin 13, "Responsibilities of the Board of Directors and Management with Regard to Interest Rate Risk," Jan. 26, 1989. Although TB 13 has already been widely disseminated, the Board is publishing it herewith, as Appendix C, in light of this bulletin's importance and relevance to today's proposal.

[5] Although TB 13 strongly encourages all institutions to develop the capability of performing these sensitivity measures for themselves, (and many eventually will be required to do so), as an initial matter the Board's staff will calculate estimates of sensitivity measurements using Section H data and will provide these estimates to thrift institutions. *See* TB 13 at pp. 4–6.

[6] A notable example is the single line called "Investment Securities—Part I" which aggregates U.S. government, municipal, and corporate securities (including preferred stock). The most problematic example, for purposes of doing the MVPE valuation, is the aggregation of data for the various instruments under the line item for "CMO and REMIC Tranches."

as experience is gained with the working model. Appendix A discusses in detail, for particular section H line items, the various approaches to this problem of data aggregation.

Moreover, limitations in the reporting detail will also affect the degree of sophistication in the type of valuation techniques that may be applied to the different section H line items. Thus, although more sophisticated techniques may be available for these items, a simple discounted cash flow valuation technique may still be used for the following line items: second mortgages, consumer loans, commercial loans, and investment securities (Part I). The choice of the appropriate discount rate is also highly significant in the development of the model since the present value of a financial instrument is quite sensitive to the discount rate. The discount rate chosen should result in a present discounted value that represents the liquidation value of the relevant asset or liability as accurately as possible. Appendix A includes a detailed discussion of various alternative methodologies for each of section H line items.

In addition to discount rates and cash flow analysis, the treatment of options in the valuation calculations is also a highly significant factor, since many financial instruments in thrift portfolios contain various embedded options, such as loan prepayments and caps on ARMs. These options held by thrift customers may reduce the value of these assets to the institution. The Board is considering three main approaches for adjusting the value of certain assets for these "embedded" options: (1) A direct pricing approach using secondary market prices, (2) a modified cash flow approach, and (3) an option-based simulation approach.

The direct pricing method is based upon a pricing curve that is obtained from observable secondary market prices. The statistically-derived pricing curve describes the relationship between market prices of mortgage-backed securities and their coupon rates. The curve is used to generate a price for reported mortgage balances based on their reported average coupon. The market value can be derived by multiplying the price by the balance of that item. Finally, the price function is shifted to reflect a parallel shift in the yield curve due to an interest rate change. For example, if rates climb 200 basis points, then a 10 percent coupon would be expected to be priced as an 8 percent coupon was prior to the rate shock.

Alternatively, the modified cash flow approach uses a discounting mechanism to arrive at the market value of financial assets with different coupons. Cash flows (including interest, principal amortization, and prepayments) are generated using reported balances, rates, remaining maturities, and a prepayment function that is estimated empirically (either by the Board or from information available from the research departments of securities firms that track this information). The discount factors are derived by generating mortgage cash flows for various coupons and then finding spreads over the zero-coupon Treasury yield curve that equate the present value of the cash flows to the observed market prices of mortgage-backed securities with those coupons. As the term structure of interest rates is subjected to parallel shocks, new cash flows are generated based on the prepayment function, and new discount rates are calculated by adding the spread over Treasury to the new yield curve. The new market value estimates are formed by discounting the new cash flows by the new discount rates.

The third approach of option-based simulation defines an interest rate process that would be used to generate hundreds or thousands of interest rate paths based on an assumed measure of interest rate volatility. Using the prepayment function, mortgage cash flows are generated along each of these paths and an average price (across all paths) is determined. An option-adjusted spread is calculated by adding a fixed spread to the zero coupon Treasury yield curve to equate the model price with the observed market price for the security being analyzed. Alternatively, an option-adjusted price can be obtained for a new interest rate scenario by shifting the interest rate process and calculating the new price using the original option-adjusted spread. Because this technique requires a great deal of computer time, the prices would be determined once each quarter for all relevant combinations of average coupon, average remaining maturity, and interest rate scenario, and these prices would then be stored in a data file. To determine the market value of a reported balance for a given interest rate change, the appropriate price would be selected from the data file—based on the interest rate scenario, the reported coupon, and the reported remaining maturity—and then multiplied by the reported balance.

As discussed in Appendix A, the option-adjusted approach is generally favored for its ability to analyze more precisely the effects of different interest-rate scenarios on the options embedded in most mortgage instruments. The Board intends that eventually its staff will implement a computer model that uses this method for the industry's most significant items of mortgages and mortgage derivative instruments, as well as certain other items. A cash flow approach, however, likely will be used for other line items where the use of this less sophisticated method is sufficiently accurate. The Board is considering use of the cash flow method for mortgage instruments during some initial period while the more sophisticated option-adjusted spread model is being refined and tested.

Request for Comment

The Board requests comments on the methodologies being considered for the measurement of interest-rate-risk exposure. Various specific issues are raised throughout this notice and Appendix A. Comments on these issues or any of the aspects regarding calculation of the IRR component should be submitted to the Board within thirty days from publication of this advanced notice of proposed rulemaking.

Appendix A—Description of the Proposed Interest Rate Risk Component of the Risk-Based Capital Requirement

Interest rate risk is the risk to income and capital resulting from changes in market rates of interest. Uncertainty with respect to future changes in interest rates translate into uncertain net interest income and market values for the financial instruments contained in thrift portfolios. The market value of a financial instrument changes as market interest rates change because the value of a given stream of cash flows declines as interest rates rise and increases as interest rates fall.

Moreover, since many assets and liabilities common to thrift portfolios contain options that may be exercised by the person on the other side of the transaction, the risks of increases and decreases in market value often are not symmetrical. To manage the risk to their net worth, thrift institutions must understand and take actions to control for possible changes in the level and volatility of interest rates.

In recognition of the importance of interest rate risk to the viability of thrift institutions, the Federal Home Loan Bank Board has announced changes—effective for June 30, 1989 financial reports—in reporting interest rate sensitive assets and liabilities using Section H of the Thrift Financial Report (see Appendix B for a copy of the revised reporting form). These data will enable the Board to improve measurement of interest rate risk. In

particular, the revised Section H will facilitate the calculation of the interest rate risk component of the proposed risk-based capital requirements. This component is based upon the risk to the market value of an institution's portfolio given an immediate 200 basis point change in interest rates. Under the Bank Board s proposed risk-based capital rule, each institution will be required to maintain incremental capital equal to 50 percent of the estimated change in the market value of portfolio equity resulting from this change in interest rates.

The market value of portfolio equity ("MVPE" or "portfolio equity") is, the aggregate market value of all of an institution's on- and off-balance sheet financial instruments (i.e., the market value of an institution's assets, minus the market value of its liabilities, plus the net market value of its off-balance sheet items). Interest rate risk is greatest for instruments that have market values very sensitive to changes in interest rates. Since the value of its portfolio of financial instruments accounts for the predominant portion of the typical financial institution's total market value, the sensitivity of portfolio equity provides a good measure of the exposure to interest rate changes on the part of insured institutions, and, ultimately, the thrift insurance fund. While the Bank Board is aware of the importance of operational equity (the present value of future net operating and fee income) and franchise value (the present value of claims to business not yet booked by the thrift), we are focusing on portfolio equity due to problems with measuring operational equity and franchise value.

The methodologies that the Board proposes to use to determine the interest rate risk component of the new regulatory capital requirement using the MVPE method are described below. The methodologies will vary somewhat for different instruments, depending both on the characteristics of the instrument and on the amount of information that will be reported for it. Descriptions for the various instruments reported on Section H are grouped to the extent that similar approaches may be used in computing their market value.

At the heart of several approaches under consideration is discounted cash flow analysis. In measuring the present value of an instrument after a 200 basis point movement in interest rates, the simplest application of a discounted cash flow analysis would be to simply add 200 basis points to the discount factors applied to each of the expected cash flows. The Board is considering two variations (described in additional detail below) on the traditional form of discounted cash flow analysis in order to account for changes in the value of "embedded options" that result from changes in interest rates:

(1) The *options-based* discounted cash flow approach is an attempt to adjust for the change in the value of options by averaging the present value of the expected cash flows over a large number of alternative interest rate paths. (Each interest rate path is generated based on an assumed level of interest rate volatility.)

(2) The *"modified"* discounted cash flow approach attempts to adjust for the change in the value of options using a less elaborate scheme. The present value calculated using this approach is equivalent to that derived by the options-based approach using an interest rate volatility assumption of zero.

Under the various approaches described below, the Board will occasionally distinguish between options that are "in-the-money" and those that are "out-of-the-money." An option is "in-the-money" when the price of the underlying instrument exceeds the option's strike price (that is, when the option can be profitably exercised). An option is "out-of-the-money" when the opposite situation occurs.

I. First Mortgages

Mortgages and mortgage-related instruments constitute the major portion of aggregate thrift industry assets (over 60% of total thrift assets). As a result, the revised Section H report will collect enhanced information for fixed-rate and adjustable-rate mortgages to facilitate more detailed analysis.

A. Fixed-rate, 1–4 Family Mortgage Loans

The revised Section H report categorizes the principal balances of fixed-rate mortgages by remaining term to repricing, with further breakouts for balances by coupon rates in 100 basis point intervals (see Appendix B). The weighted average remaining term of all coupons is also reported for each of the repricing intervals greater than 5 years. The Board is considering five different approaches for calculating the market value of these instruments: (i) an implied duration approach, (ii) a direct pricing approach using secondary market prices, (iii) a modified cash flow approach, (iv) an option-based approach, and (v) a survey of price estimates by a panel of firms dealing in mortgage securities.

(i) The first approach calculates *implied durations* for representative mortgage instruments of the appropriate coupon and remaining maturity. This is done by regressing changes in the price of a particular mortgage-backed security on changes in interest rates. The coefficient estimate resulting from that regression describes the observed price elasticity of the security and may be interpreted as the average duration that is implied by the instrument's historical price fluctuations. As this approach averages the instrument's convexity across all interest rate environments that it has experienced, it may be misleading. (Convexity refers to the rate at which duration changes in response to a change in interest rate. Duration is the present-value weighted time to maturity. It can be expressed as a percentage measure of the price responsiveness of a security to changes in interest rates.) Alternatively, the regression could be performed for all securities within a particular range of market-to-coupon spreads.

(ii) The *direct pricing* approach uses observable secondary market prices to determine prices for mortgage balances reported on Section H. The approach utilizes a pricing curve to describe the relationship between the coupon rates and market prices of mortgage-backed securities and loans. The curve is derived from actual market prices and actual coupons, using nonlinear estimation techniques. Once such a pricing curve has been created, it may be used to estimate a price, at current market interest levels, for each reported mortgage balance on the basis of the reported coupon. Multiplying the estimated price by the balance results in the estimated market value of that item under current interest rates. In order to create a similar estimate under a hypothetical interest rate change, simply move along the curve to the price corresponding to the coupon change. For example, if market rates climb 200 basis points, then a 10 percent coupon will be priced approximately like an 8 percent coupon was prior to the rate shock.

The next two approaches require the creation of a prepayment function that relates, at a minimum, the difference between the current market rate and the coupon on the mortgage instrument being modeled to the rate at which the instrument is expected to prepay. Such functions will be estimated empirically for the necessary instruments. One basis for such empirical evidence could be information supplied by the research departments of securities firms that have compiled large volumes of data on such instruments.

(iii) The *modified cash flow* approach uses a discounted present value

mechanism to calculate the market value of a mortgage instrument:

(1) Cash flows (including interest, principal amortization, and prepayment assumptions) are estimated based on Section H data, under the current interest rate environment, for actual mortgage-backed securities.

(2) For each coupon, a spread over the zero-coupon Treasury yield curve is found that equates the present value of the estimated cash flows to the observed market price of the security.

(3) To form the discount rates under the hypothetical interest rate scenarios, the derived spreads are added to each of the hypothetical yield curves. The same set of discount rates is then used in performing the market valuation for all institutions.

For a particular interest rate scenario (such as a 200 basis point shock), the market values of an institution's mortgages are calculated through estimation of the cash flows (based on the prepayment function and the balances, rates, and remaining maturities reported on Section H). Those estimated cash flows are then discounted using the discount rates appropriate to the reported coupons and interest rate scenario.

(iv) The *option-based* approach to market valuation simulates a large number of possible interest rate paths, each with the same theoretical probability of actually occurring, and calculates the present value of the instrument being analyzed under each of those paths. (While each path is equally probable, the paths tend to cluster around an expected value.) The theoretical price of the instrument is then computed as its average present value across all interest rate paths.

The first requirement of the option-based approach is to define an interest rate simulation model that will be used to generate hundreds or thousands of interest rate paths based on an assumed measure of interest rate volatility. The measure of volatility may be based on historical data or derived from the current prices of options. Using the prepayment function (either generated internally by the Board or based on estimates provided by securities firms), cash flows for a mortgage-backed security are generated and discounted along each of these paths. The model's estimate of the security's price is calculated as the average present value across all paths. The option-adjusted spread over the zero-coupon Treasury yield curve that equates the model price with the actual market price may then be calculated. Alternatively, an option-adjusted price can be obtained for the security under a hypothetical interest rate shock by shifting the starting point of the interest rate process by the amount of the shock and calculating the new price using the original option-adjusted spread.

Because this technique requires a great deal of computer time, prices would be determined once a quarter for all relevant combinations of average coupon, average remaining maturity, and interest rate scenario, and stored in a data file. To determine the market value of an institution's reported mortgage balance under a given interest rate scenario, the appropriate price would be selected from the data file (based on the interest rate scenario, the reported coupon, and the reported remaining maturity) and multiplied by the reported balance.

(v) The final approach being considered for valuing fixed-rate mortgages is to periodically obtain *price estimates* for a specified series of mortgage-backed securities from a panel of dealers. The option-based pricing approach to valuing mortgage securities has been widely adopted by the investment banking industry. Individual firms utilize option-based pricing models as analytical tools in conducting their own trading activities and are continuing to expend substantial resources in further refining and developing those models. These firms routinely estimate the prices of a large number of securities under various interest rate scenarios, and a number of firms have tentatively indicated a willingness to participate on a panel that would provide the necessary price estimates each quarter.

The mean price estimate provided by the panel for each instrument would be stored in a data file. As in the option-based approach described in approach (iv) above, to determine the market value of an institution's reported mortgage balance under a given interest rate scenario, the appropriate price would be selected from the data file and multiplied by the reported balance.

The Board is currently leaning towards the adoption of options (iii) or (iv). Option (i), the *implied durations* approach, looks back in time to determine future values. The Board prefers, to the extent it can, to look forward as historical values can only serve as approximations. Option (ii), the *direct pricing* approach, assumes we can aggregate prepayment relationships across coupons without seriously compromising the analysis, which may be problematic. For example, a pool of newly-issued 10% mortgages will behave differently than a pool of older 10% mortgages. The latter will react less sharply to a dramatic decline in interest rates than the former due to the aging of the pool and the removal from the pool of those mortgages most sensitive to interest rate changes. Option (v), where the Board would obtain prices from securities firms, has operational problems, including a forced reliance on parties outside the Board's control, which could create potential conflicts of interests.

Option (iii), the *modified cash flow* approach, has a number of pitfalls, one of which is the reliance on static spreads to Treasuries as interest rates change. Due to the complexity of developing the *options pricing* approach, however, the Board may initially adopt the modified cash flow approach, but gradually move toward the option-based approach.

B. Adjustable-rate, 1–4 Family Mortgage Loans

Section H categorizes adjustable-rate mortgages (ARMs) into two classes: those employing current market indices (such as the constant maturity Treasury indices) and those using indices that lag current market rates (such as the cost of funds indices). Principal balances are classified by remaining term to repricing for each of these broad classes of ARMs (see Appendix B). For each repricing category, information is reported on the weighted average portfolio rate, the weighted average lifetime cap, the weighted average remaining term to maturity, and balances by rate adjustment frequency. Information on margins, teasers, payment adjustment frequency, periodic rate caps or floors, periodic payment caps and floors, or negative amortization is not reported.

The Board is considering three of the five approaches discussed under the fixed-rate mortgages section for estimating the market value of ARMs: (i) The modified cash flow approach, (ii) the option-based approach, and (iii) the survey approach.

(i) Under the *modified cash flow* approach, reported data on the average portfolio rate, the weighted average remaining maturity, remaining months to repricing, and subsequent adjustment frequency would be used, in conjunction with an ARM prepayment function, to estimate cash flows resulting from the reported principal balances. ARMs are assumed to prepay as a multiple of current coupon fixed-rate conventional loans. In cases where loans have "capped out," ARMs are assumed to prepay like discount fixed-rate loans.

A number of other assumptions also must be made because of the limited data detail available in Section H. It would be assumed that the 1-year

constant maturity Treasury (CMT) index and the Eleventh District cost of funds (COFI) index are representative of the actual indices for balances reported, respectively, in the current market and lagging market index categories. The current values of these indices, as of the reporting date, is used for repricing purposes. Assumptions are also necessary for gross margins on CMT and COFI instruments. In addition, periodic interest rate caps for CMT ARMs and lifetime payment caps for COFI ARMs are assumed. All assumptions would be representative of what is typically observed in the market. Finally, because of the adjustment lag in the cost of funds index, the relationship between the Eleventh District COFI and current market rates would be determined empirically.

Prices are determined as follows:

(1) Under current interest rates, spreads over the zero-coupon Treasury yield curve are computed that equate the present value of the estimated cash flows to the observed market price of the relevant type of ARM (either 1-year CMT or COFI). Since the spread differs depending on the proximity of the current coupon to the lifetime cap, this process is necessary for lifetime caps that are "out-of-the-money" by different amounts.

(2) To form the discount rates under the hypothetical interest rate shocks, these spreads are added to each of the hypothetical yield curves.

(3) Under the hypothetical interest rate scenarios, prices are determined by discounting the cash flows.

(4) Each price is then further adjusted for the existence of the lifetime cap by deducting an explicit estimate of the market value of that "embedded option." The value of the option increases as the hypothetical mortgage rate approaches or exceeds the lifetime cap (strike rate). That value will be calculated by reference to the prices of actual interest rate caps out of the money by a comparable amount and deducted from the value of the ARM. The calculated prices are then stored in a data file and "looked up" by the model based upon the characteristics reported on an institution's Section H.

(ii) The *option-based* approach, applied to ARMs, is similar to the fixed-rate mortgage application. A large number of possible interest rate paths are simulated, each with the same theoretical probability of occurrence, and the present value of the instrument is calculated under each path. (While each path is equally probable, the paths tend to cluster around an expected value.) The theoretical price of the instrument is then computed as the average present value across all interest rate paths. As with fixed-rate mortgages, the option-based analysis requires the definition of possible interest rate paths and an assumed measure of interest rate volatility. (Volatility as used here refers to the standard deviation of changes in interest rates over a stated period of time, often one year.) It also requires an ARM prepayment function.

Cash flows for an ARM pool (or security) of known price are generated along each of these paths and the model's estimate of the pool's (or security's) price is calculated as the average present value across all paths. The option-adjusted spread over the zero-coupon Treasury yield curve that equates the model price with the actual market price may then be calculated.

Alternatively, an estimate of the option-adjusted price can be obtained for the pool (or security) under a hypothetical interest rate shock by shifting the starting point of the interest rate process and calculating the new price using the original option-adjusted spread. As proposed under the option-based approach for fixed-rate mortgages, prices would be determined once a quarter for all relevant combinations of ARM-type, interest rate scenario, average remaining maturity, and proximity to lifetime cap, and stored in a data file. Under a given interest, rate scenario, the market value of an institution's ARMs would be determined by selecting the appropriate price from the data file and multiplying the reported balance by that price.

(iii) A *survey* of dealers is the third approach under consideration for valuing ARMs. This approach is identical to that discussed in the context of fixed-rate mortgages. A panel of firms would provide the necessary estimates each quarter. The mean price estimate provided by the panel for each instrument under each hypothetical interest rate scenario would be stored in a data file. As in the option-based approach described above, to determine the market value of an institution's reported mortgage balance under a given interest rate scenario, the appropriate price is selected from the data file and multiplied by the reported balance.

As under our discussion of fixed-rate mortgages, the option of relying on outside firms has operational problems that the Board would prefer to avoid. Option (i), the modified cash flow approach, has a number of pitfalls, one of which is the reliance on static spreads to Treasuries as interest rates change. Because ARMs contain more options than fixed rate mortgages (such as annual and lifetime caps), this concern is magnified. Due to the complexity of developing the options pricing approach, however, the Board may initially adopt the modified cash flow approach, but gradually move toward the option-based approach.

C. Other Residential and All Nonresidential Mortgage Loans

The revised Section H subdivides these loans into adjustable-rate and fixed-rate categories. Within each category, balances are reported by repricing period. Information is also reported regarding the average interest rate for the balance in each repricing period. These assets represent about 15% of total thrift assets.

Conceptually, market values for these types of loans could be calculated in the same manner as the analogous 1–4 family mortgages. A major limitation, however, is that considerably less information is available on Section H for these assets, since there is much less volume in these types of loans. In addition, there does not exist a broad or deep secondary market for these assets (unlike residential mortgages), which further limits the Board's options. The Board proposes to use a discounted cash flow analysis to assess these assets. Although the use of this method may misstate the interest rate risk of these instruments, the Board believes that it will not seriously distort the interest rate risk for most institutions.

To determine the appropriate discount rate, the Board proposes to undertake a periodic survey of financial institutions involved in the limited secondary market for these assets. The survey would gather information on current market rates, which would be used to set the discount rate.

II. Mortgage Loans Servicing

To determine the market value of mortgage loans servicing (both purchased and excess), the Bank Board is proposing to rely on the same methodology adopted for First Mortgages. Given the importance of prepayment rate assumptions in determining the market value sensitivity of mortgage servicing rights, the Board will adopt either the modified cash flow approach or the option-based approach.

These two approaches require the creation of a prepayment function that relates the difference between the current market rate and the coupon on the mortgage instrument being modeled to the rate at which the instrument is expected to prepay. Such functions will be estimated empirically for the necessary instruments. One basis for

such empirical evidence could be information supplied by the research departments of several securities firms.

III. Second Mortgages and Consumer Loans

A greater share of both second mortgage and consumer loans have recently been characterized by adjustable, instead of fixed, rates. Also, more of these loans have become open-ended as lines of credit related to credit cards and home equity loans have become more readily available to consumers. Typically, the interest rates on second mortgages can be reset at least annually, and, for consumer loans, they may be reset as frequently as quarterly.

Based on the staff's understanding of these assets, the Board proposes to treat most of these as adjustable rate instruments. The bulk of second mortgages are likely to be reported in the first three repricing categories of the revised Section H (i.e., those repricing in 1 year or less). These second mortgages will be regarded as home equity loans and be treated analogous to adjustable-rate first mortgages. The Board also proposes that the loans appearing in the remaining five repricing categories be treated like single-family fixed-rate mortgages. Consumer loans will be treated as adjustable-rate loans adjusting every quarter, priced off of the prime interest rate.

Calculation of the periodic cash flows and interest income from second mortgages will utilize algorithms used for evaluating fixed-rate and adjustable-rate first mortgage loans. Prepayments, of course, are an important consideration in calculating these cash flows and a reasonable prepayment methodology will be developed. It is important to note that home equity, credit card, and other personal line-of-credit lending entail default risks that will affect their market values. The consideration of such credit risk issues, however, is dealt with in the credit risk component of the proposed rule.

An alternative approach would value second mortgages and consumer loans using a discounted cash flow analysis. While such an approach may be less accurate than the modified cash flow or options-based approaches, it does have the value of being operationally simple. The Board requests comment on the relative merit of adopting this alternative approach.

The choice of the appropriate discount rate to use for valuing these assets is more difficult because these assets do not trade in broad and deep markets like mortgage-backed securities. The Board proposes to rely on observable market rates for establishing the appropriate discount rate. The Board would periodically undertake a survey of market participants to collect information on current rates for second mortgages. The Board would use published prime interest rates for consumer loans since these loans are generally based on a spread over the prime rate.

IV. Commercial Loans

Typically, commercial loans are linked to an index (such as the prime rate) and are non-amortizing. Although commercial loans have grown more prominent on some thrift balance sheets, these assets continue to represent a very small proportion of total thrift assets. As of December 1988, they only represent approximately two percent of total assets for all thrift institutions. The Board proposes that commercial loans appearing in the first three repricing intervals on Section H be treated as non-amortizing adjustable-rate open-end credits with balloon payment of principal occurring in the fourth repricing interval. Thus, the cash flows associated with these volumes would consist of the periodic accrual of interest at the weighted average rates reported on section H as well as the final balloon payment. For the remaining five repricing intervals on section H, the Board proposes that commercial loans be treated as non-amortizing adjustable-rate open-end credits with balloon payments of principal taking place in the repricing intervals in which they are originally reported.

As an alternative to treatment as adjustable-rate open-end credit, commercial loans could be valued using a discounted cash flow analysis. The Bank Board requests comment as to whether this simpler approach to commercial loans would be sufficiently accurate.

The choice of the appropriate discount rate to use for valuing these assets is difficult due to a lack of market information. The Board proposes to rely on observable market rates for establishing the appropriate discount rate. The Board would periodically undertake a survey of market participants to collect information on current rates.

V. Investment Securities (Part 1)

Investment securities reported in Part 1 reflect the more common investment securities, such as U.S. Treasury securities, municipal bonds, corporate debt, and preferred stock. It is likely that a discounted cash flow approach will be utilized for this line item. The balances reported will be assumed to be non-amortizing, non-callable bonds. While this treatment does not characterize the interest rate sensitivity of callable securities precisely, it provides a reasonable approximation given the manner in which callable securities are reported on section H. Institutions will report callable bonds as maturing on the call date if the call option is currently in-the-money, and as maturing on the contractual maturity date if the call option is currently out-of-the-money.

The discount rate for this analysis would be drawn either from the appropriate point on the Treasury yield curve (where the maturity of the Treasury security equals the duration of the asset) or from a blend of Treasury, municipal, and corporate securities. It should be noted, however, that a "blended" rate may not differ significantly from the Treasury rate, as municipals are likely to have slightly lower interest rates than Treasuries (due to their tax status) and AAA corporate bonds slightly higher rates than Treasuries.

VI. Impact of Hedging Activities and Off-Balance Sheet Activities

The data collected on section H concerning hedging activities and off-balance sheet activities is necessarily limited, due to the wide variety of instruments. To the extent that information is not obtained, the Board will assume that the characteristics of the instruments involved fall within the normally expected range for such instruments.

The Board proposes to distinguish hedging activity from other off-balance sheet activity based upon whether the activity is related to an asset or liability on the balance sheet and whether the activity qualifies for hedging treatment under GAAP. If both conditions are met, the activity would be reported on the impact of hedging activity lines. Otherwise, the activity would be reported on the impact of off-balance sheet lines.

For most institutions, which are negatively exposed to rising interest rates, the following is a list of the most common types of financial instruments covered by the impact of *hedging activities:* long put options on Eurodollar futures, long put options on Treasury bill futures, long put options on Treasury note futures, and long put options on Treasury bond futures; long positions in interest rate caps; short positions in futures on Eurodollars, Treasury bills, Treasury notes, and Treasury bonds; and long positions in interest rate swaps (pay fixed and receive floating).

For most institutions, which are negatively exposed to rising interest rates, the following is a list of the most common financial instruments covered by the impact of *off-balance sheet activities:* optional commitments to originate, purchase, or sell assets; firm commitments to originate, purchase, or sell assets; short positions in options on futures; short positions in interest rate caps; long positions in futures; and short positions in interest rate swaps (receive a fixed rate and pay a floating rate).

For *long Treasury futures,* we will obtain information on the Section H form on the underlying futures instrument. To help clarify what is reported on the futures line, the Bank Board requires institutions to place specific futures instruments (and options on futures as mentioned below) on certain data points. In particular, futures on *Treasury bills* and *Eurodollars* will be reported in the "More Than Three Months Through Six Months" maturity/repricing column; *Treasury note* futures will be reported in the "More Than Five Years Through Ten Years" column; and *Treasury bond* futures will be reported in the "More Than Twenty Years" column. This reporting format enables the Bank Board to more clearly understand the economic characteristics of the underlying futures instruments, and it will contribute to a more accurate measurement of interest rate risk.

Once the type of futures instrument and the bond equivalent yield on the futures instrument at inception is known (from data reported on the Section H report), a market value can be estimated. The valuation of these futures instruments can be estimated by a bond value approach. The market price in the base case can be estimated using the reported bond equivalent yield. For an interest rate shock, the change in value can be derived by discounting a hypothetical security (such as an 8% coupon, twenty-year bond) by the indicated yield plus the shock. The difference would be taken as the change of value in these asset categories due to a change in rates.

For *long put options on Treasury futures,* we will obtain information on the Section H report on the underlying futures instrument. For example, an institution would report the dollar amount of an option on a Treasury bond future on a certain data point on Section H as well as the bond equivalent yield on the underlying Treasury bond futures contract at the contracted strike price. We would then make an assumption regarding the specific expiration month of the contract under analysis, use the bond equivalent yield, and infer the strike price. Once the current market value is estimated, we would subject the instrument to the interest rate shock and measure the market value sensitivity.

For *long positions in interest rate caps,* we will obtain information on the Section H report on the maturity of the cap, an adjusted notional amount of the cap, and the rate at which the cap becomes "in-the-money". We will use the weighted average rate of the cap and the maturity to "back into" the original notional amount of the cap, then subject the cap to the interest rate shock and measure the market value sensitivity.

To estimate the market value sensitivity for *options,* we are considering using the Black-Scholes option pricing model, thus deriving the underlying price in the shocked environments. This option pricing model requires an estimate of volatility, which could be the current implied market volatility for Treasury bond futures options. In the shocked environment, either the same volatility could be used or a formula for systematically changing the volatility, depending on the relative level of underlying prices, could be developed.

Swaps, both regular swaps (those that receive variable and pay fixed) and reverse swaps (those that receive fixed and pay variable), could be modeled as non-amortizing swaps where the thrift receives either the fixed or floating portion (depending on the placement in Section H). The current floating rate and the fixed rate are reported, as is the notional principal on which the swap is based, though there is some unavoidable ambiguity when multiple swaps are reported. Once the reported entries have been interpreted as a set of swaps, a valuation methodology would estimate the value of the swaps by discounting the fixed rate portion (which can be modeled as an annuity) by the floating rate on the swap plus a spread, the spread being derived from current market conditions so that newly originated swaps have a net value of zero. In shocked rate environments, the floating rate would be changed by the shocked value, while the spread could be assumed unchanged. This will result in a new discount factor to apply to the fixed rate components and hence a change in the estimated value of the swaps.

For *optional commitments to originate, purchase, or sell assets,* the institution will estimate the percentage that will actually be originated, purchased or sold and report that amount. For *firm commitments* the institution does not have to make an adjustment for any "fall-out" experience and therefore reports only the dollar amount of the commitment. In addition, the institution will report the weighted average interest rate of the optional and firm commitments. If the commitments are in the "More Than Ten Years Through Twenty Years" maturity/repricing column or the "More Than Twenty Years" maturity/repricing column, we will treat them in a manner that is economically equivalent to fixed rate mortgages. If the commitments are in the shorter maturity/repricing columns, we will treat them in a manner that is economically consistent with adjustable rate mortgages.

We propose to treat liability hedges for the most part like asset hedges, with modifications where necessary. For instance, the options line reported as liability hedges will contain both long put options and interest rate caps. The "More Than Three Months Through Six Months", "More Than Five Years Through Ten Years" and "More Than Twenty Years" maturity/repricing columns have been designated for options on futures. The other maturity/repricing columns could be assumed to contain (purchased) cap information. Caps could be valued by first estimating the notional principal amount (similar to that done with options) and then referring to a current table of market prices for caps as a function of maturity and the difference between the contractual rate and the current rate. In shocked environments, the same approach could be used where the current rate would be increased by the shock amount.

The impact of off-balance-sheet activities (liabilities) is problematic since it can contain a variety of complicated instruments of differing interest rate characteristics. We will, however, assume that all items on this line are short positions in interest rate caps. Therefore, we will treat them in a manner that is consistent with the long interest rate caps referenced above. While for most institutions these items represent a small portion of their market value, some institutions' market values may be significantly affected by these activities. Such institutions will have to be carefully supervised.

VII. Equity Securities

Equity securities represent claims of ownership ranging from shares in money market mutual funds, to shares in stock or bond funds, to outright stakes in enterprises or projects. The problem with measuring the interest rate risk of such assets is that empirical evidence about the response of equity securities to changes in interest rate risk is not

conclusive. Proxies can be used in lieu of exact measurements. For example, to the extent that equities are *pro rata* shares in identifiable types of pooled debt market instruments (for example, a money market or bond mutual fund), their interest rate risk characteristics may be analyzed as being identical to the net asset values of the securities held by the fund. Common and preferred stock funds, however, may have a wide variety of investment objectives with resulting ambiguous interest rate risk characteristics.

The Board is considering several options for measuring the interest rate risk of equity securities. One would be to ignore this line item in determining an institution's interest rate risk and apply the "average" risk all other assets and liabilities impose on an institution's market value (in essence, the weighted-average duration) to the value of equity securities.

A second approach would be to make some general assumptions and apply them to equities. For example, we could look at the actual sensitivity of equity securities' values to changes in interest rates over the past five years, and assume that this historical sensitivity will continue. One method to do this would be to determine the effective duration of equities by comparing the change in value of the S&P 500 Index over the past five years to the change in interest rates over that period.

A third option would be to exclude equity securities in calculating interest rate risk. This approach assumes that duration equals 0, which is not a neutral assumption. (For example, assuming an institution could determine the correlation between an equity security and interest rate risk, if the Board ignored equity securities in determining interest rate risk, the thrift could increase its interest rate risk without increasing its capital requirement.)

At this time, the Board is undecided about which option to pursue, though the third option is unlikely to be adopted. The Board requests comments on these options.

VIII. Debt Securities Rated Below Investment Grade

Debt securities rated below investment grade (below the top 4 ratings) may include original issue below investment grade bonds, "fallen angels", or non-rated securities. Using yields from long- and intermediate-term high-yield indexes and comparable maturity Treasury securities, the spreads between below-investment grade bonds and Treasuries have averaged between 4.45 percent and 4.34 percent, respectively, over the 1985 through 1988 period. These spreads are significantly variable with a standard deviation of ±50 to 60 basis points using monthly data. The variability of the spreads, even using a diversified yield index, is indicative of factors unique to the non-investment-grade market, such as special events and issuance volume.

The yield on below investment-grade securities will rise and fall with yields on U.S. Treasury bonds, generally with spread compression as interest rates increase. While changes in interest rates are only a partial explanation of changes in below investment-grade bond yields and market value, the Board will only focus on these changes since other factors (*i.e.*, financial health of issuer, general health of the economy, etc.) are beyond the scope of the interest rate risk component of the risk-based capital rule.

Below investment-grade bonds share some of the performance characteristics of corporate bonds, and some of the attributes of corporate equities. The Board proposes to rely on a straight discounted cash flow analysis, treating them as investment securities. While the Board believes that this is the most appropriate treatment of these assets, we recognize that many of these assets have call provisions that will not be taken into account and that may alter their market values under certain interest rate scenarios.

Research has generally demonstrated that these securities have a shorter duration than Treasuries. Given their high yield, more cash flow is received at earlier dates; this, in effect, "front loads" the cash flow. This also suggests that these instruments may be less interest rate sensitive than many other types of instruments. The Board requests comments on this, research and its implications for determining an institution's interest rate risk.

If the Board were to treat these assets as investment securities, the discount rate would be drawn either from the appropriate point on the Treasury yield curve or from a blend of Treasury, municipal and corporate securities. As noted earlier, a "blended" rate may not differ significantly from the Treasury rate, as municipals are likely to have slightly lower interest rates than Treasuries (due to their tax status) and AAA corporate bonds slightly higher rates than Treasuries.

The Board is also considering relying on observable market rates for establishing the appropriate discount rate. The Board could periodically undertake a survey of market participants to collect information on current rates or use observable rates of return on below investment grade bond funds (plus some adjustment factor).

IX. Zero Coupon Securities

Like investment securities, these deep discount securities may be analyzed using a discounted cash flow analysis. This line item also contains data on Z-tranche collateralized mortgage obligations (CMOs). To aid in our analysis of the Z-tranches, the instructions to Section H direct institutions to report them in the "More Than 10 years Through 20 years" maturity/repricing column. As described in the following discussion of CMOs, the Board proposes to use a "representative" approach in valuing such securities.

X. CMO AND REMIC Tranches/ Residuals

The Board recognizes that the valuations of CMO and Real Estate Mortgage Investment Conduit (REMIC) tranches and residuals will present the greatest difficulties given the limitations in the reporting data. In particular, some aggregation error will be inevitable given the wide variety of such investments and the desire to avoid undue reporting burdens. To ameliorate this difficulty, however, the Section H instructions direct that data on CMO and REMIC tranches and residuals be segregated by type, rather than by maturity/repricing schedule. For example, rather than report all CMO and REMIC tranches with remaining maturities of 3 months or less in the first column of Section H, institutions will report all floating rate tranches, regardless of maturity/repricing, in that column. Similarly, the next columns will gather information on all super-floating rate tranches, all inverse-floating rate tranches, etc. Thus, data will be reported on similar types of instruments in each column.

The Bank Board intends to select a representative CMO or REMIC tranche or residual that would be used to approximate the interest rate sensitivity of all such tranches or residuals reported. The dollar amount reported in each column would then be assumed to have the characteristics of these representative tranches and residuals for purposes of calculating market value and the impact of changing interest rates on these market values.

Staff is currently reviewing several methods of developing representative tranches and residuals. One method would be to create a "weighted-average" of existing tranches or residuals. Another method would be to base the representative tranche or

residual on the most common type of CMO or REMIC structure found in institutions portfolios. A third method would be to use as a model the most current structure being sold as of the reporting date. A fourth model, the most conservative, would be to assume that all thrifts hold structures that are most susceptible to interest rate risk.

Another, longer-term method the Bank Board is investigating is the expansion of reporting requirements to enable us to more accurately assess the interest rate risk of CMO and REMIC tranches and residuals. For example, some have suggested that we evaluate the utility of developing an industry-wide reporting standard on mortgage derivative products. If such a standard were developed, we could request from institutions information in a set format that would more accurately detail their investments in CMO and REMIC structures.

XI. Principal-Only Strips/Interest-Only Strips

To determine the market value of principal-only and interest-only strips, the Bank Board is proposing to rely on the same methodology adopted for First Mortgages. Given the importance of prepayment assumptions in determining the market value sensitivity of these instruments, either the modified cash flow approach or the option-based approach will be adopted (see above for details on these approaches.)

These two approaches require the creation of a prepayment function that relates the difference between the current market rate and the coupon on the mortgage instrument being modeled to the rate at which the instrument is expected to prepay. Such functions will be estimated empirically for the necessary instruments. One basis for such empirical evidence could be information supplied by the research departments of several securities firms that collect such data.

XII. Deposits

A. Interest-Bearing Deposits/Non-Interest-Bearing Deposits

Interest-bearing deposits, including NOW, Super NOW and other transaction accounts, money market deposit accounts, and passbook accounts, and non-interest-bearing deposits can be considered a thrift's core deposits. An alternative definition of core deposits is all account balances of less than $80,000; accounts with balances greater than $80,000 would be assumed to be non-core deposits. The Board requests comment on such a division or similar divisions that rely on dollar thresholds for segregating core from non-core deposits.

Because of their indefinite maturity, it is customary to regard some large percentage of core deposits as more or less permanent sources of funding. On the one hand, some analysts have argued that the indefinite maturity of core deposits makes them essentially due on demand and that, therefore, their market value is identical to their book value, and, furthermore, that their book and market values are invariant as market interest rates fluctuate. Viewed from this perspective, core deposits would detract from, rather than add to, the net market value of a thrift.

At the other extreme, other analysts have suggested that the permanence of these core deposits makes them essentially perpetuities and that, therefore, their market value can be computed like the market value of a perpetual bond. Treating core deposits as such has two important implications for the net market value of a thrift. First, when the discount rate used to determine the present value of the future interest payments on the core deposits exceeds the nominal rate on the deposits, the resulting market values will be smaller than the book values and, other things being equal, tend to increase the net market value of a thrift. Second, this valuation approach will result in significantly longer durations for core deposits, implying large price/value sensitivities.

Consequently, when evaluating the effects of an instantaneous and sustained change in market interest rates, if rates on the core deposits remain stable, the discounting process will further diminish the present, or market, value of these core deposit liabilities (*i.e.*, reduce the market value of what the institution owes to someone else) and increase the net market value of a thrift. such price/value behavior for core deposits is consistent with internal transfer pricing systems used by some depository institutions, which impute a high value to retail deposit gathering in periods of high market interest rates.

Exactly how much the net market value of a thrift is enhanced by core deposits depends on how the interest costs of those deposits change when market interest rates change. In a rising rate scenario, the biggest benefit to net market value would be gained if the rates paid on the core deposits remained fixed. But, while core deposits may be more or less permanent sources of funding, it is doubtful that they are completely interest rate inelastic. When market interest rates rise far enough, unless the rate on core deposits is adjusted upward, a thrift risks either the loss of these deposits through external disintermediation or the forced repricing of these deposits through internal migration to higher yielding deposit instruments.

The central question in determining by how much a thrift has to adjust interest rates on core deposits in order to stabilize their volume in the face of rising market interest rates is to determine a "decay" or run-off rate for deposits. Decay rates will vary by type of deposit. The Board will distinguish, at the very least, between passbook accounts, escrow accounts, and transaction accounts. Decay rates will increase as interest rates increase. One crucial component that the Bank Board will need to determine are the early withdrawal functions.

One approach the Bank Board is reviewing involves determining a "beta factor"—a slope coefficient in a regression of core deposit rates on a selected market interest rate. This approach can be implemented by using monthly data on deposit rates found in Section F of the Thrift Financial Report. It should be noted, however, that the data are available on a monthly frequency only since January 1987, a period, until recently, of mostly declining or stable rates. How thrifts will adjust their rates on core deposits in a rising rate environment is difficult to predict. Different beta factors could be applied to different types of liabilities.

To determine the appropriate discount rate, the Board proposes to establish a wholesale Certificates of Deposit (CD)-based yield curve (or one based on a similar liability). This CD yield curve would be the basis for establishing the discount rate to use for fixed maturity deposits, transaction accounts (NOW, Super NOW, etc.), Money Market Deposit Accounts, and passbook accounts. For non-interest bearing accounts, the Board could also rely on the CD yield curve, since it could be viewed as the alternative rate these funds could be earning. The creation of such a yield curve will not be easy, as CD yields may not be parallel to Treasury yields and spreads may vary significantly across regions (and across various rates). As an alternative, the Board could establish an arbitrary small discount rate (1–3%).

An alternative to a CD-based yield curve would be to rely on the Treasury yield curve. Under this option, the Board would determine a weighted-average maturity (after selection of decay rates), and refer to the Treasury yield curve to select a point on the curve as the discount rate. This would produce a

discount rate that can be expressed as the Treasury rate plus (or minus) a given spread. The Board invites comment on how such a spread should be calculated.

B. Borrowings

In contrast to the permanence of core deposits and fixed maturity deposits, certain liabilities, such as brokered certificates of deposit, Federal Home Loan Bank (FHLB) advances, bank borrowings, reverse repurchase agreements, commercial paper and mortgage-backed bonds, can be regarded as discretionary funding sources. To attract and retain these liabilities, thrifts must pay competitive market rates. Also, in contrast to the indefinite maturity of core deposits, these liabilities have definite contractual maturities, usually quite short-term (typically 180 days or less) except for FHLB advances, term borrowings from commercial banks, subordinated debt, and mortgage-backed bonds.

In determining the market value of these liabilities, a dichotomy between short-term and long-term sources arises. If the premise that a thrift must pay competitive market rates in order to attract these liabilities is accepted, then a thrift would be forced to match increases in market interest rates to retain them. Consequently, for short-term borrowings (such as those with a maturity of one year or less) any fluctuations in the market values of short-term liabilities should persist for only short periods of time. As soon as they mature, the rate will, presumably, be reset to the prevailing market rate, thus bringing the market value and book value of short-term borrowings back into parity. Hence, for short-term liabilities—brokered and large denomination CDs, reverse repurchase agreements, and commercial paper—book values should closely approximate market values.

For long-term liabilities, market values and book values can diverge, particularly if the liabilities are fixed-rate. In that case, the behavior of the market value of long-term, fixed-rate borrowings will mimic the behavior of the market value of core deposits. Just as in the case of core deposits, a thrift with long-term, fixed-rate borrowings will enjoy a windfall in its net market value when overall market interest rates rise. The periodic interest payments and the repayment of the principal which are contractually fixed will shrink in present value terms when rates rise, tending to enhance the thrift's net worth. The difficulty in putting this conceptually simple approach into practice is choosing the appropriate discount rates in both the base case and the shocked interest rate environment.

The Board proposes to use a discounted cash flow analysis of these items, and to rely on a FHLB advance-rate based yield curve for determining the discount rate for these liabilities. The advance-rate based yield curve would be used for FHLB advances. For "Other Borrowings", we will assume the first 3 categories on Section H are reverse repurchase agreements and we will rely on LIBOR for the discount rate. (Typically, reverse repos are priced using LIBOR.) For the data reported in the other columns on the "Other Borrowings" line, we will rely on the advance-rate yield curve for determining the appropriate discount rate. These columns include a wide variety of longer term borrowings, such as mortgage-backed bonds, that are collateralized (like FHLB advances) and the advance-rate yield curve appears to be the appropriate reference.

An alternative to an advance-rate yield curve would be for the Board to rely on the Treasury yield curve. The Board would determine a weighted-average maturity (after selection of decay rates), and refer to the Treasury yield curve to select a point on the curve as the discount rate. This would produce a discount rate that can be expressed as the Treasury rate plus (or minus) a given spread. The Board invites comment on how such a spread should be calculated.

The Board requests comments on the calculation of interest rate risk of deposits, including accounting for core deposit run-off and the discount rate on borrowings.

BILLING CODE 6720-01-M

Federal Home Loan Bank Board
Thrift Financial Report

As of _____, 19_____

INSTRUCTIONS
1. REPORT DOLLAR BALANCES IN THOUSANDS, e.g., $ 4,570,939,806 is $4,570,940
2. REPORT PERCENTAGES TO TWO (2) DECIMAL PLACES, e.g., 10.256% is 10.26%
3. SEE INSTRUCTIONS FOR FURTHER CLARIFICATION OF MATURITY CLASSIFICATION AND CALCULATION OF WEIGHTED AVERAGE CONTRACT RATE:

DISTRICT/DOCKET

NAME AND ADDRESS OF INSTITUTION *(Please Use Preprinted Label)*

Section H: Maturity and Yield/Cost Information, Part I: Assets

Remaining Time Before Asset Matures or Can Be Repriced - (Maturity/Repricing)

Assets	3 Months or Less	More Than 3 Months through 6 Months	More Than 6 Months through 1 Year	More Than 1 Year through 3 Years	More Than 3 Years through 5 Years	More Than 5 Years through 10 Years	More Than 10 Years through 20 Years	More Than 20 Years	Total Nonperforming Loans
MORTGAGE LOANS AND CONTRACTS									
First Mortgage Loans:									
Adjustable-Rate: 1-4 Dwellings Units									
Current Market Indices, (Treasury, LIBOR)	001 $	002 $	003 $	004 $	005 $	006 $	007 $	008 $	009 $
Portfolio Rate	010 %	011 %	014 %	013 %	014 %	015 %	016 %	017 %	018 $
Lifetime Cap	039 %	040 %	041 %	042 %	043 %	044 %	045 %	046 %	
Weighted Avg. Remaining Term (in Months)	047 Months	048 Months	049 Months	050 Months	051 Months	052 Months	053 Months	054 Months	
Balances by Rate Adjustment Frequency	119 $	120 $	121 $	122 $	123 $	124 $	125 $	126 $	
Lagging Market Indices, (COFI)	127 $	128 $	129 $	130 $	131 $	132 $	133 $	134 $	135 $
Portfolio Rate	159 %	160 %	161 %	162 %	163 %	164 %	165 %	166 %	167 $
Lifetime Cap	168 %	169 %	170 %	171 %	172 %	173 %	174 %	175 %	
Weighted Avg. Remaining Term (in Months)	199 Months	200 Months	201 Months	202 Months	203 Months	204 Months	205 Months	206 Months	
Balances by Rate Adjustment Frequency	207 $	208 $	209 $	210 $	211 $	212 $	213 $	214 $	
Fixed Rate: 1-4 Dwelling Units	239 $	240 $	241 $	242 $	243 $	244 $	245 $	246 $	247 $
	248 %	249 %	250 %	251 %	252 %	253 %	254 %	255 %	256 $
Balances by Selected Coupon Rates									
Less than 8.00%						257 $	258 $	259 $	
8.00% to 8.99%						279 $	280 $	281 $	
9.00% to 9.99%						282 $	283 $	284 $	
10.00% to 10.99%						285 $	286 $	287 $	
11.00% to 11.99%						288 $	289 $	290 $	
12.00% to 13.99%						291 $	292 $	293 $	
14.00% or more						294 $	295 $	296 $	
Weighted Avg. Remaining Term (in Months)						297 Months	298 Months	299 Months	
Other Residential and All Nonresidential									
Adjustable-Rate	311 $	312 $	313 $	314 $	315 $	316 $	317 $	318 $	319 $
	320 %	321 %	322 %	323 %	324 %	325 %	326 %	327 %	328 $
Fixed-Rate	329 $	330 $	331 $	332 $	333 $	334 $	335 $	336 $	337 $
	351 %	352 %	353 %	354 %	355 %	356 %	357 %	358 %	359 $
Second Mortgage Loans	360 $	361 $	362 $	363 $	364 $	365 $	366 $	367 $	368 $
	369 %	370 %	371 %	372 %	373 %	374 %	375 %	376 %	377 $

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DISTRICT/DOCKET

NAME AND ADDRESS OF INSTITUTION *(Please Use Preprinted Label)*

Section H: Maturity and Yield/Cost Information, Part I: Assets

Remaining Time Before Asset Matures or Can Be Repriced - (Maturity/Repricing)

Assets	3 Months or Less	More Than 3 Months through 6 Months	More Than 6 Months through 1 Year	More Than 1 Year through 3 Years	More Than 3 Years through 5 Years	More Than 5 Years through 10 Years	More Than 10 Years through 20 Years	More Than 20 Years	Total Nonperforming Loans
Mortgage Loans Serviced for Others - Principal Balance of Loans Serviced									
Less than 8.00%			378 $			379 $	380 $	381 $	
8.00% to 8.99%			401 $			402 $	403 $	404 $	
9.00% to 9.99%			405 $			406 $	407 $	408 $	
10.00% to 10.99%			409 $			410 $	411 $	412 $	
11.00% to 11.99%			413 $			414 $	415 $	416 $	
12.00% to 13.99%			417 $			418 $	419 $	420 $	
14.00% or more			421 $			422 $	423 $	424 $	
Weighted Avg. Remaining Term (in Months)			425 Months			426 Months	427 Months	428 Months	
Weighted Avg. Servicing Spread (in basis points)			429 b.p.			430 b.p.	431 b.p.	432 b.p.	
NONMORTGAGE LOANS									
Consumer	433 $	434 $	435 $	436 $	437 $	438 $	439 $	440 $	441 $
	442 %	443 %	444 %	445 %	446 %	447 %	448 %	449 %	450 $
Commercial	451 $	452 $	453 $	454 $	455 $	456 $	457 $	458 $	459 $
	460 %	461 %	462 %	463 %	464 %	465 %	466 %	467 %	468 $
UNAMORTIZED YIELD ADJUSTMENTS	469 $	470 $	471 $	472 $	473 $	474 $	475 $	476 $	477 $
INVESTMENT SECURITIES - PART I	478 $	479 $	480 $	481 $	482 $	483 $	484 $	485 $	486 $
	487 %	488 %	489 %	490 %	491 %	492 %	493 %	494 %	
IMPACT OF HEDGING ACTIVITY (ASSETS)									
Options	495 $	496 $	497 $	498 $	499 $	500 $	501 $	502 $	503 $
	504 %	505 %	506 %	507 %	508 %	509 %	510 %	511 %	
Futures and Firm Commitments to Sell	512 $	513 $	514 $	515 $	516 $	517 $	518 $	519 $	520 $
	539 %	540 %	541 %	542 %	543 %	544 %	545 %	546 %	
IMPACT OF OFF-BALANCE SHEET ACTIVITY (ASSETS)									
Options and Optional Commitments to Originate or Purchase	547 $	548 $	549 $	550 $	551 $	552 $	553 $	554 $	555 $
	573 %	574 %	575 %	576 %	577 %	578 %	579 %	580 %	
Futures and Firm Commitments to Originate or Purchase	581 $	582 $	583 $	584 $	585 $	586 $	587 $	588 $	589 $
	590 %	591 %	592 %	593 %	594 %	595 %	596 %	597 %	
Swaps (Received Fixed)	613 $	614 $	615 $	616 $	617 $	618 $	619 $	620 $	621 $
	622 %	623 %	624 %	625 %	626 %	627 %	628 %	629 %	

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1. REPORT DOLLAR BALANCES IN THOUSANDS, e.g., $ 4,570,939,805 is $4,570,940
2. REPORT PERCENTAGES TO TWO (2) DECIMAL PLACES, e.g., 10.256% is 10.26%
3. SEE INSTRUCTIONS FOR FURTHER CLARIFICATION OF MATURITY CLASSIFICATION AND CALCULATION OF WEIGHTED AVERAGE CONTRACT RATE:

DISTRICT/DOCKET

NAME AND ADDRESS OF INSTITUTION *(Please Use Preprinted Label)*

Assets

Section H: Maturity and Yield/Cost Information, Part I: Assets

Remaining Time Before Asset Matures or Can Be Repriced - (Maturity/Repricing)

Assets	3 Months or Less	More Than 3 Months through 6 Months	More Than 6 Months through 1 Year	More Than 1 Year through 3 Years	More Than 3 Years through 5 Years	More Than 5 Years through 10 Years	More Than 10 Years through 20 Years	More Than 20 Years	Total
INVESTMENT SECURITIES - PART II									
Equity Securities									630 $
Debt Securities Rated Below	631 $	632 $	633 $	634 $	635 $	636 $	637 $	638 $	639 $
Investment Grade	653 %	654 %	655 %	656 %	657 %	658 %	659 %	660 %	
Zero Coupon Securities	661 $	662 $	663 $	664 $	665 $	666 $	667 $	668 $	669 $
	670 %	671 %	672 %	673 %	674 %	675 %	676 %	677 %	
CMO and REMIC Tranches	699 $	700 $	701 $	702 $	703 $	704 $	705 $	706 $	707 $
	708 %	709 %	710 %	711 %	712 %	713 %	714 %	715 %	
Principal Only Strips (Principal Amount of Underlying Collateral) Underlying Collateral Rates									
Less than 8.00%							716 $	717 $	
8.00% to 8.99%							718 $	719 $	
9.00% to 9.99%							720 $	721 $	
10.00% to 10.99%							739 $	740 $	
11.00% to 11.99%							741 $	742 $	
12.00% to 13.99%							743 $	744 $	
14.00% or more							745 $	746 $	
Weighted Avg. Remaining Term (in Months)							747 Months	748 Months	

Interest Only Strips, Fixed-Rate Residuals and Floating-Rate Residuals (Principal Amount of Underlying Collateral) Underlying Collateral Rates	Floating-Rate Residuals	Fixed-Rate Residuals	Interest Only	Interest Only
Less than 8.00%	749 $	750 $	751 $	752 $
8.00% to 8.99%	753 $	754 $	755 $	756 $
9.00% to 9.99%	757 $	758 $	759 $	760 $
10.00% to 10.99%	771 $	772 $	773 $	774 $
11.00% to 11.99%	775 $	776 $	777 $	778 $
12.00% to 13.99%	779 $	780 $	781 $	782 $
14.00% or more	783 $	784 $	785 $	786 $
Weighted Avg. Remaining Term (in Months)	787 Months	788 Months	789 Months	790 Months
Weighted Avg. Spread (in basis points)	791 b p	792 b p		

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Federal Home Loan Bank Board
Thrift Financial Report

As of _____, 19_____

INSTRUCTIONS
1. REPORT DOLLAR BALANCES IN THOUSANDS, e.g., $ 4,570,939,806 is $4,570,940
2. REPORT PERCENTAGES TO TWO (2) DECIMAL PLACES, e.g., 10.256% is 10.26%
3. SEE INSTRUCTIONS FOR FURTHER CLARIFICATION OF MATURITY CLASSIFICATION AND CALCULATION OF WEIGHTED AVERAGE CONTRACT RATE:

DISTRICT/DOCKET

NAME AND ADDRESS OF INSTITUTION *(Please Use Preprinted Label)*

Section H: Maturity and Yield/Cost Information, Part II: Liabilities

Remaining Time Before Liabilities Matures or Can Be Repriced - (Maturity/Repricing)

Liabilities	3 Months or Less	More Than 3 Months through 6 Months	More Than 6 Months through 1 Year	More Than 1 Year through 3 Years	More Than 3 Years through 5 Years	More Than 5 Years through 10 Years	More Than 10 Years through 20 Years	More Than 20 Years	Total
DEPOSITS									
Interest Bearing Deposits									
Fixed Maturity Deposits	793 $	794 $	795 $	796 $	797 $	798 $	799 $	800 $	801 $
	811 %	812 %	813 %	814 %	815 %	816 %	817 %	818 %	
NOW, Super NOW and Other Transaction Accounts	819 $								820 $
	821 %								
Money Market Deposit Accounts (MMDAs)	822 $								823 $
	824 %								
Passbook Accounts	825 $								826 $
	827 %								
Non-Interest Bearing Deposits	828 $								829 $
BORROWINGS									
FHLB Advances	830 $	831 $	832 $	833 $	834 $	835 $	836 $	837 $	838 $
	839 %	840 %	841 %	842 %	843 %	844 %	845 %	846 %	
Other Borrowings	847 $	848 $	849 $	850 $	851 $	852 $	853 $	854 $	855 $
	856 %	857 %	858 %	859 %	860 %	861 %	862 %	863 %	
Redeemable Preferred Stock and Qualifying Subordinated Debentures	864 $	865 $	866 $	867 $	868 $	869 $	870 $	871 $	872 $
	873 %	874 %	875 %	876 %	877 %	878 %	879 %	880 %	
IMPACT OF HEDGING ACTIVITY (LIABILITIES)									
Options	881 $	882 $	883 $	884 $	885 $	886 $	887 $	888 $	889 $
	890 %	891 %	892 %	893 %	894 %	895 %	896 %	897 %	
Futures	898 $	899 $	900 $	901 $	902 $	903 $	904 $	905 $	906 $
	907 %	908 %	909 %	910 %	911 %	912 %	913 %	914 %	
Swaps (Receive Floating)	915 $	916 $	917 $	918 $	919 $	920 $	921 $	922 $	923 $
	924 %	925 %	926 %	927 %	928 %	929 %	930 %	931 %	
IMPACT OF OFF-BALANCE SHEET ACTIVITY (LIABILITIES)									
Sale of Caps, Optional and Firm Commitments to Acquire/Dispose Liabilities	932 $	933 $	934 $	935 $	936 $	937 $	938 $	939 $	940 $
	941 %	942 %	943 %	944 %	945 %	946 %	947 %	948 %	

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BILLING CODE 6720-01-C

Appendix C—Office of Regulatory Activities

Thrift Bulletin

[Handbook: Thrift Activities; Subjects: Interest Rate Risk Management; Section 420; TB 13; January 26, 1989]

Responsibilities of the Board of Directors and Management With Regard to Interest Rate Risk

Summary: Managing interest rate risk is an essential component in the safe and sound management of a thrift institution. This Bulletin provides guidance to the boards of directors and managements of insured institutions about their responsibilities in this area. It describes the internal policies, practices, and procedures that supervisory staff will expect institutions to utilize in order to comply with the existing regulations on interest rate risk.

For Further Information Contact: The FHLBank District in which you are located or the Industry Anaysis Division of the Office of Regulatory Activities, Washington, D.C., (202) 331–4511.

Thrift Bulletin 13

Under 12 CFR 563.17–6 and 571.3, an insured institution's board of directors is responsible for ensuring the prudent management of the institution's exposure to interest rate risk. In addition, § 563.17(a) requires safe and sound management practices, of which the management of interest rate risk is an essential component. Since the adoption of the current regulations governing interest rate risk, Federal Home Loan Bank System (FHLBS) staff has refined and enhanced the System's regulatory policies and procedures with respect to the interest rate risk exposure of insured institutions. This Bulletin reflects that evolution in regulatory philosophy and presents guidance on the responsibilities of boards of directors and management regarding interest rate risk.

FHLBS staff will expect insured institutions to adopt formal interest rate risk policy statements, containing the elements described in this Bulletin, by June 30, 1989.[1] Institutions will be expected to implement those policies and any attendant changes in management procedures by December 31, 1989, or sooner where Supervisory Agents believe it to be warranted.

[1] This Bulletin applies to insured institutions and any subsidiaries which, for purposes of the Thrift Financial Report, are reported on a consolidated basis

Definition of Interest Rate Risk

Interest rate risk (IRR) is defined as the sensitivity of a depository institution's earnings and net asset value to changes in interest rates. IRR can result from (a) timing differences in the repricing of an institution's assets, liabilities, and off-balance sheet contracts; (b) the exercise of embedded options, such as loan pre-payments, interest rate caps, and deposit withdrawals; and (c) differences in the behavior of lending and funding rates, sometimes referred to as basis risk. (An example of the later source of IRR would occur if floating rate assets and liabilities, with otherwise identical repricing characteristics, were based on market indexes that were imperfectly correlated.)

The earnings of most thrift institutions are exposed to IRR because their deposit liabilities reprice faster than their mortgage-related assets. As a result, if interest rates rise, the cost of funds increases more rapidly than the yield on assets, thereby reducing net interest income. From a market value perspective, changes in market interest rates have a greater effect on the present value of long-term, fixed-rate instruments than on that of short-term instruments. If an institution's assets are of longer duration than its liabilities, the net present value of the institution's portfolio will decline when interest rates rise.

Objectives of IRR Management

The objective of IRR management is to maintain an institution's earnings and net worth within self-imposed parameters over a range of possible interest rate environments. Institutions will differ in their willingness to assume IRR, their management capability, and their ability to absorb potential losses. As with other aspects of financial management, a trade-off exists between risk and return; thus, the objective of IRR management need not be the complete elimination of an institution's exposure to changes in interest rates. The board of directors, however, has a fiduciary responsibility of ensuring that the level of IRR exposure incurred by the institution does not exceed prudent levels.

Policies and Procedures for Managing IRR at Insured Institutions

Managing IRR must be considered within the larger context of business planning (e.g., the introduction of new products, expansion, the pricing and structuring of products and services [including any associated customer options]). Although the following discussion focuses on the responsibilities of the board of directors and management that relate specifically to managing IRR, the discussion is not meant to imply that IRR management can be conducted in isolation of other business considerations. Further, although the board of directors ought properly to be concerned with the exposure of the consolidated organization and will undoubtedly want to assess the risk exposure of that entity, these guidelines pertain to the insured institution only.

Responsibilities of the Board of Directors

As noted above, § 563.17(a) requires insured institutions to have safe and sound management practices. The management of IRR is an essential aspect of managing a thrift institution. The board of directors must, therefore, ensure that the institution's policies and procedures for managing IRR are of a level of sophistication that is commensurate with the institution's activities and portfolio and that the institution's exposure is limited to a prudent level. More specifically, § 563.17–6 holds the board accountable for the IRR exposure of the institution and requires the board to establish a formal policy for the management of IRR and to review the results of management's implementation of that policy on at least a quarterly basis.

Board of Directors' Policy Statement

The board's policy statement should delegate responsibility for the management of IRR and should establish limits on the level of the institution's exposure. Specific authorizations and restrictions should be provided regarding the institution's trading activities, its use of derivatives and synthetic instruments, and its hedging strategies. To facilitate the board's oversight of management in this area, the policy should specify the contents of management's report to the board on this subject and state the frequency with which the directors will review IRR management (at least quarterly).

The FHLBS has promulgated several policy statements addressing instruments or strategies that can have a significant effect on an institution's IRR management. These policy statements include:

- Risk Conrolled Arbitrage (Memorandum SP–74, February 16, 1988; reprinted in United States League of Savings Institutions, *Federal Guide*, ¶11,762);
- Investment Consultants (Memorandum R–70, March 16, 1988);

• Mortgage Derivative Products and Mortgage Swaps (Thrift Bulletin TB 12, December 13, 1988).

Because of their connection to IRR, the requirements of these issuances should be of interest to boards of directors in framing their policies on IRR.

Exposure Limits

The most important element of the board of directors' policy statement is a set of explicit limits on the institution's exposure to IRR. Because the ability to control IRR requires a clear understanding of the amount at risk, a board policy in which the IRR limit is expressed only in terms of repricing gaps will no longer be considered sufficient; the board must be aware of the sensitivity of the institution's earnings and net asset value to interest rate changes.

To ensure that the board has a clear understanding of the possible consequences of the IRR exposure being authorized, the institution's IRR policy should define the maximum potential reduction in earnings and net worth that the board is prepared to accept as a result of possible changes in market interest rates. Management should structure the institution's balance sheet and off-balance sheet items so that projected results (under reasonable, documented assumptions) comply with the board's limits.

Specifically, the policy should establish limits on the sensitivity of the institution's net interest income [2] and market value of portfolio equity [3] to changes in interest rates. That is, the policy should specify the maximum percentage change the board of directors is prepared to accept in those two measures as a result of a parallel shift in the term structure of interest rates prevailing at the date of the analysis. These maximum changes should be specified for instantaneous and sustained changes in interest rates of ±100, ±200, ±300, and ±400 basis points and should be measured relative to the levels of net interest income and portfolio equity under an assumption of no change in interest rates.[4]

EXAMPLE 1—XYZ SAVINGS & LOAN ASSOCIATION INTEREST RATE RISK EXPOSURE LIMITS

Change in interest rates (in basis points)	Maximum Permissible Change in:	
	Net interest income (next four quarters) (percent)	Market value of portfolio equity (percent)
[1]	[2]	[3]
+400	−125	−90
+300	−75	−50
+200	−50	−25
+100	−20	−10
0	0	0
−100	−20	−10
−200	−50	−25
−300	−75	−50
−400	−125	−90

Example 1 illustrates a possible set of exposure limits that a board of directors might establish. In the example, the directors of XYZ Savings and Loan have specified that the institution's exposure be limited so that, for each interest rate change listed in column [1] of the table, the institution's net interest income would be reduced by no more than the percentage shown in column [2], and its market value of portfolio equity would be reduced by no more than the percentage in column [3]. For example, if the market value of XYZ's portfolio equity were $1,000 under current market interest rates, management would have to limit the institution's IRR exposure so that an immediate increase in interest rates of 400 basis points (column [1], line 1) would reduce portfolio equity by no more than 90 percent (column [3], line 1), to a level of $100. Similarly, if XYZ's net interest income were projected to be $400 under a constant rate environment, then management would have to limit the institution's exposure so that a 400 basis point increase in interest rates (again, column [1], line 1) would reduce net interest income by no more than 125 percent (column [2], line 1), to no worse than −$100 (i.e., $400×(−125/100)=−$100).

The maximum permissible reduction in net interest income and portfolio equity are for the board of directors to determine. The lower the board's desired level of interest rate sensitivity, the closer to zero it should set these percentages. Note, for instance, that in column [3] of the example, XYZ's board has established limits that would enable the market value of the institution's portfolio to withstand an instantaneous and sustained interest rate change of 400 basis points in either direction.[5]

The technical details of implementing such a policy—e.g., choosing a discount rate for computing changes in market value, ensuring reasonable assumptions about the behavior of customer options, and validating the overall computations—may be left to management. All assumptions should be documented and the board should, as part of its oversight function, periodically assure itself that they are reasonable.

Finally, note that the example specifies the maximum permissible percentage reductions under both positive and negative changes in interest rates. Although the net interest income and portfolio equity of most thrift institutions would increase in a declining interest rate environment, it is clearly possible for the opposite situation to exist (i.e., for an institution to be "asset sensitive"). There is, of course, no need for the board of directors to set the exposure limits symmetrically around a zero percent change in rates, as in Example 1. It should establish the exposure limits in whatever configuration best reflects the board's views on what constitutes a prudent level of exposure, based upon the institution's financial condition and its expertise in managing IRR.

Periodic review of IRR management:

Periodic reports by management to the board of directors should demonstrate compliance with the exposure limits. Reports by management should, therefore, include an analysis of how net interest income and the market value of protfolio equity would be affected by the hypothetical interest rate changes specified in the board's policy.

Example 2 illustrates the type of interest rate sensitivity analysis that

[2] The interest rate sensitivity of net interest income should be evaluated over at least the next four quarters.

[3] The market value of portfolio equity (hereafter also referred to as "portfolio equity") is defined as the net present value of an institution's existing assets, liabilities, and off-balance sheet instruments. The appendix to this bulletin discusses the composition and calculation of this measure in more detail.

[4] These particular interest rate scenarios provide a convenient basis for analyzing risk exposure; they are not meant to be interest rate forecasts. It has become standard practice in financial analysis to examine the impact of potential rate changes of these magnitudes on the value of financial instruments and/or portfolios.

[5] As an institution's projected net interest income (under constant interest rates) or portfolio equity approach zero, the board of directors will need to be aware that its limits on IRR exposure, expressed as maximum allowable percentage changes in these two measures, will effectively become more stringent and may require adjustment.

Institutions with negative projected net interest income (under constant rates) should calculate their percentage changes by dropping the negative sign of the denominator (i.e., by using the absolute value of the demominator). For example, assume an institution's net interest income is projected to be −$100 for the next four quarters under a constant interest rate environment. If the board of directors were unwilling to see net interest income fall below −$150 under a particular interest rate scenario, it would specify the exposure limit for that scenario as −50%. That is,

$$\frac{[-\$150-(-\$100)]\times 100}{\$100}=-50\%.$$

management should prepare in order to demonstrate compliance with its board's exposure limits. In columns [3] and [5] of the example, XYZ's management is reporting that neither net interest income nor portifolio equity would be reduced by more than the percentages permitted by the board of directors, shown in columns [2] and [4], under any of the prescribed interest rate environments. Finally, the levels of net interest income and portfolio equity used as denominators in calculating columns [3] and [5] should be reported as memo items.

Clearly, measurements of the sensitivity of the institution's net interest income and portfolio equity will be necessary for management to demonstrate compliance with the board of directors' limits on exposure (as in columns [3] and [5] of Example 2). The FHLBS will calculate estimates of these sensitivity measures using data reported on Section H of the Thrift Financial Report and will provide those estimates to each insured institution.

EXAMPLE 2—CURRENT EXPOSURE OF XYZ SAVINGS & LOAN ASSOCIATION TO HYPOTHETICAL CHANGES IN INTEREST RATES

Change in interest rates (in basis points)	Percentage change in:			
	Net interest income		MV of portfolio equity	
	Board limit (percent)	Projected change (percent)	Board limit (percent)	Projected change (percent)
[1]	[2]	[3]	[4]	[5]
+400	−125	−105	−90	−85
+300	−75	−70	−50	−40
+200	−50	−30	−25	−15
+100	−20	−10	−10	−5
0	0	0	0	0
−100	−20	15	−10	10
−200	−50	35	−25	15
−300	−75	40	−50	15
−400	−125	45	−90	20

Memo: Net interest income projected under constant interest rates: $400; Market value of portfolio equity under current interest rates: $1,000.

All thrift institutions are strongly encouraged to develop the capability of performing those sensitivity measures for themselves, both to improve the quality of information being supplied to their boards of directors and to improve management's ability to manage the institution's exposure to interest rate risk. Nonetheless, because these measurement techniques are not presently in widespread use in the thrift industry, the managements of most institutions many opt to rely on the FHLBS's interest rate sensitivity estimates to demonstrate compliance with their directors' exposure limits.

Institutions with assets in excess of $500 million or investing in high risk mortgage derivative products will not be permitted to rely solely on the FHLBS's exposure estimates. Such institutions should have the management information systems necessary to perform the required interest rate sensitivity measurements. They will, therefore, be expected to be able to generate reliable net interest income and market value sensitivity measures by December 31, 1989.[6] In addition, Supervisory Agents have the discretion to require other institutions to develop such a measurement capability. Typically, this will be required of institutions with substantial volumes of options, futures, or interest rate swaps, or that otherwise have a complex asset/liability profile.

Because any system of IRR management will rely on certain assumptions, management should demonstrate to the board, and document, that the assumptions underlying its interest rate sensitivity analysis are reasonable. For example, management would need to explain how prepayments would be expected to behave under the various interest rate changes and how they would affect the sensitivity measures.[7] If more elaborate sensitivity analysis is used by the institution than is prescribed by these guidelines, the assumptions being made in that analysis should be discussed with the board and documented.

The board of directors should also consider requiring management to reconcile actual operating results and market values with those projected in the prior period's interest rate sensitivity analysis. Analyzing the sources of variance between actual and forecast will be beneficial not only in improving the institution's financial forecasting ability, but will add to the board's understanding of the major factors driving the institution's exposure to interest rates and the variability of those factors. This exercise will also highlight, for the board, any de facto changes in the institution's business plan.

Responsibilities of Management

Management is responsible for structuring the institution's balance sheet and off-balance sheet transactions in a manner consistent with the board's IRR policy. Management will accomplish this objective through three activities:

- Developing and implementing an IRR management strategy;
- Establishing and maintaining a system of limits and controls; and
- Establishing and utilizing an IRR measurement system.

IRR management strategy:

The board and management are responsible for ensuring the safety and soundness of the institution's IRR management strategy and its implementation. In deciding upon an IRR strategy, the board and management should take into account the level of expertise needed to implement the strategy and whether such expertise is currently available in the institution. A prudent IRR management strategy should be within the scope of existing management expertise. If an institution requires outside assistance to formulate and implement such a strategy, it should observe the provisions of R-Memorandum Number 70 (Investment Consultants: Guidelines on Use of Such Consultants, and Monitoring and Controlling Their Activities). That is, management must understand fully the reasons for adopting a given strategy

[6] Supervisory Agents may extend this deadline for institutions that are making good faith efforts to develop the necessary data processing systems and technical abilities.

[7] Managements using the FHLBS estimate measures of interest rate sensitivity should conduct a similar discussion with their directors in order to apprise them of the reliability of those estimates.

and its possible effects on the short-term and long-term financial health of the institution. Responsibility for such decision-making cannot be ceded to the consultant.

There may be circumstances in which steps taken to manage IRR conflict with or limit an institution's ability to attain other business goals. In order to ensure that such conflicts are minimized, management's IRR strategy should be developed in conjunction with the creation of a comprehensive business plan for the institution. Further, an institution's strategy to remedy an excessive IRR exposure should not rely on speculative or problematic plans that might result in excessive credit or liquidity risk.

Limits and controls:

Management must control the institution's operating activities so that the aggregate IRR exposure may be coordinated and brought into compliance with the board's policy. The diverse investment, lending, funding, and capital market activities of the institution must be conducted within a system of reporting and controls that will permit management to monitor and manage the overall IRR exposure of the institution.

Furthermore, certain units within the typical institution have the ability to affect the institution's IRR exposure quite rapidly. Typically these are units involved in capital markets activities. Because of the significant potential impact such activities can have on the institution's exposure and the speed with which they can be consummated, management should establish exposure limits on such units and their personnel. A timely means of monitoring compliance with those exposure limits is essential. The longer the lag between the possible establishment of an undesired or unauthorized exposure and management's ability to reverse that exposure, the greater is the possibility of loss.

IRR measurement:

An essential element of managing IRR is the ability to measure interest rate exposure accurately. Management has the responsibility to use a method of measurement that accurately assesses its exposure to IRR. The state of knowledge about asset/liability management has advanced rapidly in recent years and the development of measurement techniques, such as duration and simulation models, has greatly enhanced the ability of depository institutions to measure and manage their IRR exposures.

As previously discussed, most institutions will be permitted to rely on the exposure estimates calculated by the FHLBS. These estimates will generally be less accurate than measures generated using detailed internal data and based upon an institution's own informed assumptions. Moreover, because of reporting lags, the FHLB's estimates will not be as current as an institution's internally generated exposure measurements would be. It is, therefore, strongly recommended that all thrift institutions develop the capability to calculate their own measures of exposure to interest rate risk.

The measures and procedures presented in this Bulletin are not intended to preclude institutions from engaging in other techniques of measuring and managing IRR. On the contrary, the interest rate sensitivity measures prescribed above should be considered the minimum level of information needed by the board of directors in order to oversee the management of IRR effectively.

Regulatory Concerns

There are four circumstances that would cause regulatory concern: (a) a nonexistent or incomplete IRR policy, (b) unacceptably high limits on IRR exposure, (c) noncompliance with the board of directors' IRR policy, and (d) weaknesses in management reporting systems or internal controls.

Nonexistent IRR Policy

The first cause for regulatory concern is the absence of a written IRR policy or a policy that lacks one or more of the elements discussed in the section, "Board of directors' policy statement". As noted above, existing regulation requires the board of directors to adopt a policy for the management of IRR. If such a policy is nonexistent or fails to address relevant policy issues, the institution may be in violation of § 563.17–6, and the situation will be treated in the same manner as other possible violations of regulations.

Unacceptable Limits on IRR Exposure

The board of directors has a fiduciary responsibility to operate the institution in a safe and sound manner. It should, therefore, establish and ensure compliance with prudent limits on IRR exposure. Generally, such limits should not permit an exposure that has the potential to deplete net worth to a level below the regulatory minimum or to eliminate the market value of the institution's portfolio equity under plausible changes in interest rates.[8]

If regulatory staff determines that excessive exposures are permitted by the board's IRR policy, or if the institution fails to take appropriate action to reduce such an existing exposure, the board of directors will be apprised of these findings and be given adequate opportunity to respond to the assessment of the regulatory staff. If, following consideration of the institution's response, the Principal Supervisory Agent believes that the institution's IRR exposure is inappropriate, and if the institution fails to take remedial steps, enforcement action will be taken.

Noncompliance with Board of Directors' IRR Policy

If an institution's IRR exposure is found to exceed the limits established by the board of directors, corrective measures (e.g., improved reporting systems, intensified board oversight) should be taken in order to prevent a recurrence of the situation. If the excessive exposure was the result of intentional decisions by management to exceed the board's limits, appropriate disciplinary action should be taken by the board of directors.

Weaknesses in Reporting or Internal Controls

The final source of possible concern is an institution with weaknesses in its IRR management practices and procedures (e.g., poor measurement systems, weak internal controls). While such an institution's exposure may not be excessive at present, deficiencies in IRR management allow for the possibility that excessive exposures may develop in the future. The identified weaknesses will be discussed with the institution's board and management, and an acceptable plan to correct them will be required.

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[8] Some troubled institutions have limited scope to reduce their IRR exposure. Supervisory Agents, therefore, have discretion to modify the guidelines in this bulletin for institutions operating under Consent Agreements or Special Agreements. In determining whether such an institution's exposure is excessive from a regulatory perspective, Supervisory Agents should review the available alternatives for reducing the institution's exposure and the impact those alternatives would have on the institution's financial condition. The Supervisory Agent's decision should be communicated to the institution's board and documented. Such an institution should, nonetheless, otherwise comply with the guidelines in this bulletin. In particular, its board of directors will be expected to maintain exposure limits (albeit possibly high ones) and its management will be expected to measure and report the institution's current interest rate exposure.

Appendix to Thrift Bulletin 13—Calculating the Market Value of Portfolio Equity

The market value of portfolio equity ("portfolio equity") is a key component of a depository institution's economic value. As is discussed below, portfolio equity is defined as the net present value of assets, liabilities, and off-balance sheet contracts.

The interest rate sensitivity of portfolio equity is an important measure of IRR. Since portfolio equity includes the present value of the future cash flows resulting from all currently booked instruments, it provides a leading indicator of an institution's future stream of net interest income. This allows management to take a longer-term perpsective on IRR management without having to examine the effects of a particular portfolio structure on net interest income in each individual future period; the change in portfolio equity thereby provides a compact measure of those future effects.

The interest rate sensitivity of portfolio equity is also highly relevant from a regulatory perspective, since it measures the potential effect of interest rate changes on the major component of an institution's economic value. Economic value is an important consideration for all thrifts, but it is an especially important consideration with regard to marginally solvent institutions, since changes in portfolio equity have a direct bearing on the potential cost of disposing of such institutions, should they fail.

Calculating the Market Value of Portfolio Equity

The general formula for calculating the market value of portfolio equity is as follows:

Market value of portfolio equity=

Present value of cash flows from existing assets

minus the present value of cash flows from existing liabilities

plus the present value of cash inflows from existing off-balance sheet contracts

minus the present value of cash outflows from existing off-balance sheet contracts.

Computing changes in the market value of portfolio equity will clearly require an institution to make a number of assumptions. Management should ensure that all assumptions are reasonable and are documented. The following discussion provides some guidance in calculating portfolio equity and in making the necessary assumptions.

Cash flows to be included in the market value calculation:

- cash and deposits with other financial institutions;
- expected receipts (principal and interest) associated with existing loans, leases, participations, and securities (regardless of whether held for investment or trading purposes);
- expected payments of principal and interest associated with existing deposits and borrowings (including subordinated debt);
- expected payments of dividends on all preferred stock;
- expected cash inflows and outflows associated with existing futures, swaps, options, and firm and optional commitments to originate, purchase, and sell financial instruments; and
- any other well-defined, contractual cash flows resulting from existing financial contracts, such as loan servicing agreements.

Adjustments to cash flows due to customer options:

Future cash flows on the items listed above may be greatly affected by the existence of customer options, such as loan prepayments, caps, or deposit withdrawals. The institution will need to make assumptions about how customer options will be exercised under different interest rates and adjust the scheduled cash flows accordingly.

Assets to be included at book value:

It is difficult to calculate the present value of many of the assets and liabilities of thrift institutions because of uncertainty about the timing and the amount of their cash flows. To avoid unduly complicating the IRR measurement process at this early stage of implementation, it may reasonably be assumed that the present values of some items will not be affected by changes in the level of interest rates. This assumption is most easily incorporated into the analysis by assuming that the present value of such items remains at book value (net of any associated valuation allowance), regardless of the interest rate scenario. In calculating the percentage change in the market value of portfolio equity, therefore, the present value of the following assets should generally be assumed to be equal to their book value (net of any associated valuation allowance), regardless of the level of interest rates;

- fixed assets;
- repossessed assets;
- real estate held for development, investment, or resale; and
- assets of which any portion is classified as doubtful or loss.

Cash flows to be excluded from the market value calculation:

The following types of cash flows should generally be excluded from the calculation of portfolio equity:

- anticipated loan fees or service charges, other than those that may reasonably be expected in connection with existing assets or liabilities or in connection with existing commitments;
- anticipated non-interest expenses (e.g., salaries, occupancy expenses, income taxes); and
- future dividends (except preferred dividends) to be paid to or received from individuals or corporations (including service corporations or other unconsolidated affiliates).

In addition, certain other balance sheet entries that are appropriate under Regulatory Accounting Principles should be excluded from the calculation of the market value of portfolio equity. These are accounting entries intended to delay the recognition of income or expense cash flows that actually occurred in the past, such as:

- deferred loan fees, unamortized premiums, or unaccredited discounts;
- fees paid on options;
- deferred gains or losses on futures or options or deferred gains or losses on the sale of assets; and
- goodwill.

Method discounting:

A number of alternative discount rate configurations are possible, ranging from discounting all cash flows by a single "average" discount rate, to configurations in which different discounts rates are used for each cash flow. The costs and benefits of one method versus another will differ for each institution. The responsibility for choosing a particular discounting method resides with the institution. Like other assumptions necessary to the analysis, the details of the method that is chosen, and the rationale for choosing it, should be documented. Finally, to assure an unbiased analysis, the method of discounting should be applied by the institution in a consistent manner over time. Any changes, and the reasons for them, should be well documented.

By the Federal Home Loan Bank Board

John F. Ghizzoni,

Assistant Secretary

[FR Doc. 89-15555 Filed 6-30-89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-290, RM-6607]

Radio Broadcasting Services; Magnolia, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed on behalf of Hogan Broadcasting

System, seeking the allotment of FM Channel 271A to Magnolia, Arkansas, as that community's second local FM broadcast service. Coordinates used for Channel 271A at Magnolia are 33–21–53 and 93–13–36.

DATES: Comments must be filed on or before August 14, 1989, and reply comments on or before August 29, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Hogan Broadcasting System, Attn: Billy G. Hogan, Rt. 1, Box 183, Elkmont, AL 35620.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–290 , adopted May 31, 1989, and released June 23, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–15631 Filed 6–30–89; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 54, No. 126
Monday, July 3, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation Renewal of the Eastern Iowa (IA) Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Eastern Iowa Grain Inspection and Weighing Service, Inc. as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: August 1, 1989.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Eastern Iowa's designation terminates on July 31, 1989, and requested applications for official agency designation to provide official services within specified geographic areas in the February 1, 1989, **Federal Register** (54 FR 5101). Applications were to be postmarked by March 3, 1989. Eastern Iowa was the only applicant for designation in its area and applied for designation renewal in the entire area currently assigned to that agency. The Service announced the applicant name in the April 3, 1989, **Federal Register** (54 FR 13393) and requested comments on the applicant for designation. Comments were to be postmarked by May 18, 1989. No comments were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that Eastern Iowa is able to provide official services in the geographic area for which the Service is renewing its designation. Effective August 1, 1989, and terminating July 31, 1992, Eastern Iowa is designated to provide official inspection functions in its specified geographic area, as previously described in the February 1 **Federal Register**.

Interested persons may obtain official services by contacting the agency at the following telephone number: Eastern Iowa at (319) 322–7149.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: June 21, 1989.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 89–15524 Filed 6–30–89; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Cairo (IL) Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to Cairo Grain Inspection Agency, Inc.

DATE: Comments must be postmarked on or before August 17, 1989.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454.

Telemail users may respond to [LLEBAKKEN/FGIS/USDA] telemail.

Telex users may respond as follows: To: Lewis Lebakken, TLX:7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the May 1, 1989, **Federal Register** (54 FR 18559). Applications were to be postmarked by May 31, 1989. There were two applications for the Cairo designation; Cairo applied for designation renewal in the entire area currently assigned to that agency, except for Hopkinsville Elevator Co., Inc., Hopkinsville, KY, and the L&N Railroad Siding on Alternate U.S. Route 41 five miles south of Hopkinsville, Kentucky, both in Christian County, Kentucky (located inside Ohio Valley Grain Inspection's area), and a neighboring official agency, Ohio Valley Grain Inspection applied for designation only for Hopkinsville Elevator Co., Inc., Hopkinsville, Kentucky, and the L&N Railroad Siding on Alternate U.S. Route 41 five miles south of Hopkinsville, Kentucky, both in Christian County, Kentucky.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register** and the applicants will be informed of the decision in writing.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: June 21, 1989.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 89–15525 Filed 6–30–89; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Alva (OK) and Schaal (IA) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic areas currently assigned to the specified agencies. The official agencies are Thomas Oller dba Alva Grain Inspection Department (Alva) and Lewis D. Schaal dba D.R. Schaal Agency (Schaal).

DATE: Applications must be postmarked on or before August 2, 1989.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Alva, located at 129 College, Alva, OK 73717 and Schaal, located at 219 River Avenue North, Belmond, IA 50421, were designated under the Act as official agencies on January 1, 1987. Alva and Schaal were designated to provide official inspection functions.

The official agencies' designations terminate on December 31, 1989. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Alva, in the State of Oklahoma, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Alfalfa, Beckham, Caddo, Custer, Dewey, Ellis, Greer, Harper, Kiowa, Major, Roger Mills, Washita, Woods, and Woodward Counties.

The geographic area presently assigned to Schaal, in the State of Iowa, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Kossuth County line from U.S. Route 169; the northern Winnebago, Worth, and Mitchell County lines;

Bounded on the East by the eastern Mitchell County line; the eastern Floyd County line south to B60; B60 west to T64; T64 south to State Route 188; State Route 188 south to C33;

Bounded on the South by C33 west to T47; T47 north to C23; C23 west to S56; S56 south to C25; C25 west to U.S. Route 65; U.S. Route 65 south to State Route 3; State Route 3 west to S41; S41 south to C55; C55 west to Interstate 35; Interstate 35 southwest to the southern Wright County line; the southern Wright County line west to U.S. Route 69; U.S. Route 69 to C54; C54 west to State Route 17; and

Bounded on the West by State Route 17 north to the southern Kossuth County line; the Kossuth County line west to U.S. Route 169; U.S. Route 169 north to the northern Kossuth County line.

The following location, outside of the above contiguous geographic area, is part of this geographic area assignment: Gold Eagle Co-op, Eagle Grove, Wright County (located inside A.V. Tischer and Son, Inc.'s area).

Exceptions to Schaal's assigned geographic area are the following locations inside Schaal's area which have been and will continue to be serviced by the following official agencies:

1. Central Iowa Grain Inspection Service, Inc.: Farmers Co-op Elevator Company, Chapin, Franklin County; Hampton Farmers Co-op Company, Hampton, Franklin County; and Farmers Community Co-op, Inc., Rockwell, Cerro Gordo County.

2. A.V. Tischer and Son, Inc.: Cargill, Inc., Algona, Kossuth County; Big Six Elevator, Burt, Kossuth County; Gold-Eagle, Goldfield, Wright County; and Farmers Co-op Elevator, Holmes, Wright County.

Interested parties, including Alva and Schaal, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning January 1, 1990, and ending December 31, 1992. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: June 21, 1989.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 89–15526 Filed 6–30–89; 8:45 am]

BILLING CODE 3410–EN–M

Forest Service

Draft 1990 Forest and Rangeland Renewable Resources Program

AGENCY: Forest Service, USDA.

ACTION: Notice of availability; request for public comment.

SUMMARY: The Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974, as amended, directs the Secretary of Agriculture to prepare a long range recommended renewable natural resources program every 5 years. The draft of the 1990 Program, which will respond to the renewable resource situation projected in the 1989 RPA Assessment, is now available to those who wish to review and comment on it. The comments will be used in preparing the final 1990 RPA Program, which is scheduled to be delivered to Congress in March, 1990.

DATE: Comments must be received in writing by October 3, 1989.

ADDRESSES: Copies of the Draft 1990 RPA Program may be obtained by writing to Meg Rauch, Resources Program and Assessment, Room 3305, Forest Service—USDA, P.O. Box 96090, Washington DC 20090–6090 or telephoning Jo Bridges at (202) 447–2494.

Reviewers should send their comments in writing to Jo Bridges, Public Affairs Office, USDA Forest Service, P.O. Box 96090, Room 3117, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Questions about the 1990 Draft Program may be addressed to Thomas Mills, Director, Resources Program and Assessment, (202) 382–8235.

SUPPLEMENTARY INFORMATION: The 1990 Renewable Resources Program will serve as a strategic planning document that will provide long-term direction to guide the general emphasis and composition of Forest Service activities. A major focus of the 1990 RPA Program is to evaluate and clarify the current role, and propose a future role, of the Forest Service as a provider of forest and rangeland resources. Examples of important Forest Service roles discussed in the Draft Program document are multiple use management, resource inventory and analysis, and international forestry.

The 1990 RPA Program will also address contemporary natural resource issues, such as management of old-growth forests, riparian management, and clearcutting. The Draft Program describes these contemporary issues and presents proposed Forest Service responses to the issues. In addition, the Draft Program will describe various long-term strategies which describe different emphases among resource outputs for future Forest Service programs.

As a long-term strategic planning document, the Program is not accompanied by an Environmental Impact Statement. Should the Forest Service initiate any legislative proposals resulting from the 1990 RPA Program, the Forest Service will prepare the appropriate environmental documents specific to the proposed legislation as needed. Similarly, implementation of the Program through Regional Guides and the forest land and resource management planning process will entail environmental analysis and documentation at appropriate decision points.

After consideration of the public comment received on the strategies presented in the draft, the Secretary will recommend and the President will identify a selected Forest Service Program which will be described in the Final 1990 Program and conveyed to the Congress.

George M. Leonard,

Associate Chief,

Date: June 16, 1989.

[FR Doc. 89–15571 Filed 6–30–89; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1989 Special Survey.

Form Numbers: D–1 (CJ89), D–3 (CJ89), D–39A (CJ89), D–39B (CJ89).

Agency Approval Number: None.

Type of Request: New collection–Expedited Review.

Burden: 9,200 hours.

Number of Respondents: 40,000.

AVG Hours Per Response: 14 minutes.

Needs and Uses: The 1989 Special Survey is a test survey of the revised format of responses to the race question, which will be asked of the entire U.S. population in the 990 census. The survey will be used to implement refined processing procedures for the 1990 census.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230. The application form is printed below.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 27, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

BILLING CODE 3510–07–M

D-39 (CJ89) (L1)
(6-89)

UNITED STATES DEPARTMENT OF COMMERCE
Bureau of the Census
Washington, D.C. 20233

OFFICE OF THE DIRECTOR

FROM THE DIRECTOR
BUREAU OF THE CENSUS

We are conducting this 1989 Special Survey as part of our decennial planning process. Your answers will help us to complete the procedures for the 1990 decennial census.

Your housing unit, not you personally, was randomly selected from 13.7 million addresses from across the Nation. Please complete this survey form to help make the survey successful.

Your answers to this survey are private. By law (Title 13, United States Code) we cannot release the results of the survey in a way that would enable any other person or government agency to associate your answers with you as an individual, other members of your household, or your home. Only Bureau of the Census employees who are sworn under penalty of law can see your answers. The same law that safeguards that your survey form remains private also requires that you answer the survey questions to the best of your knowledge.

Please answer all questions that apply to you and your household and mail the survey form back in the enclosed envelope by October 6 or as close to that date as possible.

Thank you for your help. We look forward to receiving your completed survey form as soon as possible.

Enclosures

D-39 (CJ89KL2)
(6-89)

UNITED STATES DEPARTMENT OF COMMERCE
Bureau of the Census
Washington, D.C. 20233

OFFICE OF THE DIRECTOR

FROM THE DIRECTOR
BUREAU OF THE CENSUS

Recently, we mailed a 1989 Special Survey Form to your household. If you have already completed and mailed your survey form, we thank you. If you have not completed your survey form, please complete this survey form and return it in the enclosed envelope as soon as possible.

Title 13, United States Code, authorizes the Census Bureau to conduct this survey and requires that you answer the questions to the best of your knowledge. This same law requires that answers to the survey questions be held in strict confidence. Information about you or members of your household is private. Your answers will help us to complete procedures for the 1990 decennial census.

Thank you for your help.

Enclosures

- Please fill out this Special Survey Form and mail it back as soon as possible.

- **For Help Call —**

Chicago Regional Office ..... (312) 353-6251
Dallas Regional Office ..... (214) 767-0621
Detroit Regional Office ..... (313) 226-7742
Los Angeles Regional Office ..... (213) 209-6616
New York Regional Office ..... (212) 264-3860
Philadelphia Regional Office ..... (215) 597-4920

Your answers are confidential

By law (title 13, U.S. Code), census employees are subject to fine and/or imprisonment for any disclosure of your answers. The same law requires that you answer the questions to the best of your knowledge.

If the address shown below has the wrong apartment identification, please write the correct number or location below.

1989 SPECIAL SURVEY FORM

Thank you for taking time to complete and return this survey form. It's important to you, your community, and the Nation.

The law requires answers but guarantees privacy.

The law under which this survey is being taken (Title 13, U.S. Code), requires you to answer the survey questionnaire to the best of your knowledge. However, it is the same law that guarantees that your survey form remains confidential. Only Census Bureau employees can see your form. No one else--no other government body, no police department, no court system or welfare agency--is permitted to see this confidential information under any circumstances.

How to get started--and get help.

Start by listing on the next page the names of all the people who live in your home. Please answer all questions with a black lead pencil. You'll find detailed instructions for answering the survey form in the enclosed guide. If you need additional help, call the Census Regional Office telephone number to the left, near your address.

Please answer and return your form by October 6, 1989.

Complete your form and return it by October 6, 1989 in the preaddressed envelope provided.

Again, thank you for answering this survey form.
Remember: Return the completed form by October 6, 1989.

U.S. Department of Commerce
BUREAU OF THE CENSUS
FORM D-1(CJ89)

OMB No. XXXX-XXXX
Approval Expires XX/XX/XX

Page 1

The 1989 Special Survey must count every person at his or her "usual residence." This means the place where the person lives and sleeps most of the time.

1a. List on the numbered lines below the name of each person living here on October 6, 1989, including all persons staying here who have no other home. If EVERYONE at this address is staying here temporarily and usually lives somewhere else, follow the instructions given in question 1b below.

Include	Do NOT include
• Everyone who usually lives here such as family members, housemates and roommates, foster children, roomers, boarders, and live-in employees	• Persons who usually live somewhere else
• Persons who are temporarily away on a business trip, on vacation, or in a general hospital	• Persons who are away in an institution such as a prison, mental hospital, or a nursing home
• College students who stay here while attending college	• College students who live somewhere else while attending college
• Persons in the Armed Forces who live here	• Persons in the Armed Forces who live somewhere else
• Newborn babies still in the hospital	
• Children in boarding schools below the college level	
• Persons who stay here most of the week while working even if they have a home somewhere else	• Persons who stay somewhere else most of the week while working
• Persons with no other home who are staying here on October 6, 1989	

Print last name, first name, and middle initial for each person. Begin on line 1 with the household member (or one of the household members) in whose name this house or apartment is owned, being bought, or rented. If there is no such person, start on line 1 with any adult household member.

	LAST	FIRST	INITIAL		LAST	FIRST	INITIAL
1				7			
2				8			
3				9			
4				10			
5				11			
6				12			

1b. If EVERYONE is staying here only temporarily and usually lives somewhere else, list the name of each person on the numbered lines above, fill this circle → ○ and print their usual address below. DO NOT PRINT THE ADDRESS LISTED ON THE FRONT COVER.

House number | Street or road/Rural route and box number | Apartment number

City | State | ZIP Code

County or foreign country | Names of nearest intersecting streets or roads

NOW PLEASE OPEN THE FLAP TO PAGE 2 AND ANSWER ALL QUESTIONS FOR THE FIRST 7 PEOPLE LISTED. USE A BLACK LEAD PENCIL ONLY.

Page 2

PLEASE ALSO ANSWER HOUSING QUESTIONS ON PAGE 3 →

PLEASE ALSO ANSWER HOUSING QUESTIONS ON PAGE 3 →

	PERSON 1	PERSON 2	PERSON 3	PERSON 4	PERSON 5	PERSON 6
Please fill one column → for each person listed in Question 1a on page 1.	Last name First name Middle initial	Last name First name Middle initial	Last name First name Middle initial	Last name First name Middle initial	Last name First name Middle initial	Last name First name Middle initial
2. How is this person related to PERSON 1? Fill ONE circle for each person. If **Other relative** of person in column 1, fill circle and print exact relationship, such as mother-in-law, grandparent, son-in-law, niece, cousin, and so on.	START in this column with the household member (or one of the members) in whose name the home is owned, being bought, or rented. If there is no such person, start in this column with any adult household member.	If a RELATIVE of Person 1: ○ Husband/wife ○ Brother/sister ○ Natural-born or adopted son/daughter ○ Father/mother ○ Grandchild ○ Other relative ○ Stepson/stepdaughter If NOT RELATED to Person 1: ○ Roomer, boarder, or foster child ○ Unmarried partner ○ Housemate, roommate ○ Other nonrelative	If a RELATIVE of Person 1: ○ Husband/wife ○ Brother/sister ○ Natural-born or adopted son/daughter ○ Father/mother ○ Grandchild ○ Other relative ○ Stepson/stepdaughter If NOT RELATED to Person 1: ○ Roomer, boarder, or foster child ○ Unmarried partner ○ Housemate, roommate ○ Other nonrelative	If a RELATIVE of Person 1: ○ Husband/wife ○ Brother/sister ○ Natural-born or adopted son/daughter ○ Father/mother ○ Grandchild ○ Other relative ○ Stepson/stepdaughter If NOT RELATED to Person 1: ○ Roomer, boarder, or foster child ○ Unmarried partner ○ Housemate, roommate ○ Other nonrelative	If a RELATIVE of Person 1: ○ Husband/wife ○ Brother/sister ○ Natural-born or adopted son/daughter ○ Father/mother ○ Grandchild ○ Other relative ○ Stepson/stepdaughter If NOT RELATED to Person 1: ○ Roomer, boarder, or foster child ○ Unmarried partner ○ Housemate, roommate ○ Other nonrelative	If a RELATIVE of Person 1: ○ Husband/wife ○ Brother/sister ○ Natural-born or adopted son/daughter ○ Father/mother ○ Grandchild ○ Other relative ○ Stepson/stepdaughter If NOT RELATED to Person 1: ○ Roomer, boarder, or foster child ○ Unmarried partner ○ Housemate, roommate ○ Other nonrelative
3. Sex Fill ONE circle for each person.	○ Male ○ Female	○ Male ○ Female	○ Male ○ Female	○ Male ○ Female	○ Male ○ Female	○ Male ○ Female
4. Race Fill ONE circle for the race that the person considers himself/herself to be. If **Indian (Amer.)**, print the name of the enrolled or principal tribe. → If **Other Asian or Pacific Islander (API)**, print one group, for example: Hmong, Fijian, Laotian, Thai, Tongan, Pakistani, Cambodian, and so on. → If **Other race**, print race. →	○ White ○ Black or Negro ○ Indian (Amer.) (Print the name of the enrolled or principal tribe.) ○ Eskimo ○ Aleut Asian or Pacific Islander (API) ○ Chinese ○ Japanese ○ Filipino ○ Asian Indian ○ Hawaiian ○ Samoan ○ Korean ○ Guamanian ○ Vietnamese ○ Other API ○ Other race (Print race)	○ White ○ Black or Negro ○ Indian (Amer.) (Print the name of the enrolled or principal tribe.) ○ Eskimo ○ Aleut Asian or Pacific Islander (API) ○ Chinese ○ Japanese ○ Filipino ○ Asian Indian ○ Hawaiian ○ Samoan ○ Korean ○ Guamanian ○ Vietnamese ○ Other API ○ Other race (Print race)	○ White ○ Black or Negro ○ Indian (Amer.) (Print the name of the enrolled or principal tribe.) ○ Eskimo ○ Aleut Asian or Pacific Islander (API) ○ Chinese ○ Japanese ○ Filipino ○ Asian Indian ○ Hawaiian ○ Samoan ○ Korean ○ Guamanian ○ Vietnamese ○ Other API ○ Other race (Print race)	○ White ○ Black or Negro ○ Indian (Amer.) (Print the name of the enrolled or principal tribe.) ○ Eskimo ○ Aleut Asian or Pacific Islander (API) ○ Chinese ○ Japanese ○ Filipino ○ Asian Indian ○ Hawaiian ○ Samoan ○ Korean ○ Guamanian ○ Vietnamese ○ Other API ○ Other race (Print race)	○ White ○ Black or Negro ○ Indian (Amer.) (Print the name of the enrolled or principal tribe.) ○ Eskimo ○ Aleut Asian or Pacific Islander (API) ○ Chinese ○ Japanese ○ Filipino ○ Asian Indian ○ Hawaiian ○ Samoan ○ Korean ○ Guamanian ○ Vietnamese ○ Other API ○ Other race (Print race)	○ White ○ Black or Negro ○ Indian (Amer.) (Print the name of the enrolled or principal tribe.) ○ Eskimo ○ Aleut Asian or Pacific Islander (API) ○ Chinese ○ Japanese ○ Filipino ○ Asian Indian ○ Hawaiian ○ Samoan ○ Korean ○ Guamanian ○ Vietnamese ○ Other API ○ Other race (Print race)
5. Age and year of birth **a.** Print each person's age at last birthday. Fill in the matching circle below each box. **b.** Print each person's year of birth and fill the matching circle below each box.	a. Age 0 ○ 0 ○ 0 ○ 1 ○ 1 ○ 1 ○ 2 ○ 2 ○ 3 ○ 3 ○ 4 ○ 4 ○ 5 ○ 5 ○ 6 ○ 6 ○ 7 ○ 7 ○ 8 ○ 8 ○ 9 ○ 9 ○ b. Year of birth 1 1 ● 8 ○ 0 ○ 0 ○ 9 ○ 1 ○ 1 ○ 2 ○ 2 ○ 3 ○ 3 ○ 4 ○ 4 ○ 5 ○ 5 ○ 6 ○ 6 ○ 7 ○ 7 ○ 8 ○ 8 ○ 9 ○ 9 ○	a. Age 0 ○ 0 ○ 0 ○ 1 ○ 1 ○ 1 ○ 2 ○ 2 ○ 3 ○ 3 ○ 4 ○ 4 ○ 5 ○ 5 ○ 6 ○ 6 ○ 7 ○ 7 ○ 8 ○ 8 ○ 9 ○ 9 ○ b. Year of birth 1 1 ● 8 ○ 0 ○ 0 ○ 9 ○ 1 ○ 1 ○ 2 ○ 2 ○ 3 ○ 3 ○ 4 ○ 4 ○ 5 ○ 5 ○ 6 ○ 6 ○ 7 ○ 7 ○ 8 ○ 8 ○ 9 ○ 9 ○	a. Age 0 ○ 0 ○ 0 ○ 1 ○ 1 ○ 1 ○ 2 ○ 2 ○ 3 ○ 3 ○ 4 ○ 4 ○ 5 ○ 5 ○ 6 ○ 6 ○ 7 ○ 7 ○ 8 ○ 8 ○ 9 ○ 9 ○ b. Year of birth 1 1 ● 8 ○ 0 ○ 0 ○ 9 ○ 1 ○ 1 ○ 2 ○ 2 ○ 3 ○ 3 ○ 4 ○ 4 ○ 5 ○ 5 ○ 6 ○ 6 ○ 7 ○ 7 ○ 8 ○ 8 ○ 9 ○ 9 ○	a. Age 0 ○ 0 ○ 0 ○ 1 ○ 1 ○ 1 ○ 2 ○ 2 ○ 3 ○ 3 ○ 4 ○ 4 ○ 5 ○ 5 ○ 6 ○ 6 ○ 7 ○ 7 ○ 8 ○ 8 ○ 9 ○ 9 ○ b. Year of birth 1 1 ● 8 ○ 0 ○ 0 ○ 9 ○ 1 ○ 1 ○ 2 ○ 2 ○ 3 ○ 3 ○ 4 ○ 4 ○ 5 ○ 5 ○ 6 ○ 6 ○ 7 ○ 7 ○ 8 ○ 8 ○ 9 ○ 9 ○	a. Age 0 ○ 0 ○ 0 ○ 1 ○ 1 ○ 1 ○ 2 ○ 2 ○ 3 ○ 3 ○ 4 ○ 4 ○ 5 ○ 5 ○ 6 ○ 6 ○ 7 ○ 7 ○ 8 ○ 8 ○ 9 ○ 9 ○ b. Year of birth 1 1 ● 8 ○ 0 ○ 0 ○ 9 ○ 1 ○ 1 ○ 2 ○ 2 ○ 3 ○ 3 ○ 4 ○ 4 ○ 5 ○ 5 ○ 6 ○ 6 ○ 7 ○ 7 ○ 8 ○ 8 ○ 9 ○ 9 ○	a. Age 0 ○ 0 ○ 0 ○ 1 ○ 1 ○ 1 ○ 2 ○ 2 ○ 3 ○ 3 ○ 4 ○ 4 ○ 5 ○ 5 ○ 6 ○ 6 ○ 7 ○ 7 ○ 8 ○ 8 ○ 9 ○ 9 ○ b. Year of birth 1 1 ● 8 ○ 0 ○ 0 ○ 9 ○ 1 ○ 1 ○ 2 ○ 2 ○ 3 ○ 3 ○ 4 ○ 4 ○ 5 ○ 5 ○ 6 ○ 6 ○ 7 ○ 7 ○ 8 ○ 8 ○ 9 ○ 9 ○
6. Marital status Fill ONE circle for each person.	○ Now married ○ Separated ○ Widowed ○ Never married ○ Divorced	○ Now married ○ Separated ○ Widowed ○ Never married ○ Divorced	○ Now married ○ Separated ○ Widowed ○ Never married ○ Divorced	○ Now married ○ Separated ○ Widowed ○ Never married ○ Divorced	○ Now married ○ Separated ○ Widowed ○ Never married ○ Divorced	○ Now married ○ Separated ○ Widowed ○ Never married ○ Divorced
7. Is this person of Spanish/Hispanic origin? Fill ONE circle for each person. If **Yes, other Spanish/Hispanic**, print one group. →	○ No (not Spanish/Hispanic) ○ Yes, Mexican, Mexican-Am., Chicano ○ Yes, Puerto Rican ○ Yes, Cuban ○ Yes, other Spanish/Hispanic (Print one group, for example: Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on.)	○ No (not Spanish/Hispanic) ○ Yes, Mexican, Mexican-Am., Chicano ○ Yes, Puerto Rican ○ Yes, Cuban ○ Yes, other Spanish/Hispanic (Print one group, for example: Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on.)	○ No (not Spanish/Hispanic) ○ Yes, Mexican, Mexican-Am., Chicano ○ Yes, Puerto Rican ○ Yes, Cuban ○ Yes, other Spanish/Hispanic (Print one group, for example: Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on.)	○ No (not Spanish/Hispanic) ○ Yes, Mexican, Mexican-Am., Chicano ○ Yes, Puerto Rican ○ Yes, Cuban ○ Yes, other Spanish/Hispanic (Print one group, for example: Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on.)	○ No (not Spanish/Hispanic) ○ Yes, Mexican, Mexican-Am., Chicano ○ Yes, Puerto Rican ○ Yes, Cuban ○ Yes, other Spanish/Hispanic (Print one group, for example: Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on.)	○ No (not Spanish/Hispanic) ○ Yes, Mexican, Mexican-Am., Chicano ○ Yes, Puerto Rican ○ Yes, Cuban ○ Yes, other Spanish/Hispanic (Print one group, for example: Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on.)
FOR CENSUS USE →	○ ○ ☐	○ ○	○ ○	○ ○	○ ○	○ ○

PERSON 7

Last name

First name — Middle initial

If a RELATIVE of Person 1:

- Husband/wife
- Natural-born or adopted son/daughter
- Stepson/stepdaughter
- Brother/sister
- Father/mother
- Grandchild
- Other relative

If NOT RELATED to Person 1:

- Roomer, boarder, or foster child
- Housemate, roommate
- Unmarried partner
- Other nonrelative

- Male
- Female

- White
- Black or Negro
- Indian (Amer.) (Print the name of the enrolled or principal tribe.)
- Eskimo
- Aleut

Asian or Pacific Islander (API)

- Chinese
- Filipino
- Hawaiian
- Korean
- Vietnamese
- Japanese
- Asian Indian
- Samoan
- Guamanian
- Other API

- Other race (Print race)

a. Age — b. Year of birth

1

- Now married
- Widowed
- Divorced
- Separated
- Never married

- No (not Spanish/Hispanic)
- Yes, Mexican, Mexican-Am., Chicano
- Yes, Puerto Rican
- Yes, Cuban
- Yes, other Spanish/Hispanic (Print one group, for example: Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on.)

NOW PLEASE ANSWER QUESTIONS H1a—H7b FOR THIS HOUSEHOLD

H1a. Did you leave anyone out of your list of persons for Question 1a on page 1 because you were not sure if the person should be listed — for example, someone temporarily away on a business trip or vacation, a newborn baby still in the hospital, or a person who stays here once in a while and has no other home?

- Yes, please print the name(s) and reason(s).
- No

b. Did you include anyone in your list of persons for Question 1a on page 1 even though you were not sure that the person should be listed — for example, a visitor who is staying here temporarily or a person who usually lives somewhere else?

- Yes, please print the name(s) and reason(s).
- No

H2. Which best describes this building? Include all apartments, flats, etc., even if vacant.

- A mobile home or trailer
- A one-family house detached from any other house
- A one-family house attached to one or more houses
- A building with 2 apartments
- A building with 3 or 4 apartments
- A building with 5 to 9 apartments
- A building with 10 to 19 apartments
- A building with 20 to 49 apartments
- A building with 50 or more apartments
- Other

H3. How many rooms do you have in this house or apartment? Do NOT count bathrooms, porches, balconies, foyers, halls, or half-rooms.

- 1 room
- 2 rooms
- 3 rooms
- 4 rooms
- 5 rooms
- 6 rooms
- 7 rooms
- 8 rooms
- 9 or more rooms

H4. Is this house or apartment —

- Owned by you or someone in this household with a mortgage or loan?
- Owned by you or someone in this household free and clear (without a mortgage)?
- Rented for cash rent?
- Occupied without payment of cash rent?

If this is a ONE-FAMILY HOUSE —

H5a. Is this house on ten or more acres?

- Yes
- No

b. Is there a business (such as a store or barber shop) or a medical office on this property?

- Yes
- No

Answer only if you or someone in this household OWNS OR IS BUYING this house or apartment —

H6. What is the value of this property; that is, how much do you think this house and lot or condominium unit would sell for if it were for sale?

- Less than $10,000
- $10,000 to $14,999
- $15,000 to $19,999
- $20,000 to $24,999
- $25,000 to $29,999
- $30,000 to $34,999
- $35,000 to $39,999
- $40,000 to $44,999
- $45,000 to $49,999
- $50,000 to $54,999
- $55,000 to $59,999
- $60,000 to $64,999
- $65,000 to $69,999
- $70,000 to $74,999
- $75,000 to $79,999
- $80,000 to $89,999
- $90,000 to $99,999
- $100,000 to $124,999
- $125,000 to $149,999
- $150,000 to $174,999
- $175,000 to $199,999
- $200,000 to $249,999
- $250,000 to $299,999
- $300,000 to $399,999
- $400,000 to $499,999
- $500,000 or more

Answer only if you PAY RENT for this house or apartment —

H7a. What is the monthly rent?

- Less than $80
- $80 to $99
- $100 to $124
- $125 to $149
- $150 to $174
- $175 to $199
- $200 to $224
- $225 to $249
- $250 to $274
- $275 to $299
- $300 to $324
- $325 to $349
- $350 to $374
- $375 to $399
- $400 to $424
- $425 to $449
- $450 to $474
- $475 to $499
- $500 to $524
- $525 to $549
- $550 to $599
- $600 to $649
- $650 to $699
- $700 to $749
- $750 to $999
- $1,000 or more

b. Does the monthly rent include any meals?

- Yes
- No

FOR CENSUS USE

A. Total persons

B. Type of unit — Occupied: First form, Cont'n; Vacant: Regular, Usual home elsewhere

C1. Vacancy status

- For rent
- For sale only
- Rented or sold, not occupied
- For seas/rec/occ
- For migrant workers
- Other vacant

C2. Is this unit boarded up?

- Yes
- No

D. Months vacant

- Less than 1
- 1 up to 2
- 2 up to 6
- 6 up to 12
- 12 up to 24
- 24 or more

E. Complete after

LR TC QA JIC 1
P/F RE I/T
MV ED EN

P0 P3 P6 JIC 2
P1 P4 IA
P2 P5 SM

F. Cov.

1b 1a 7 H1

G. DO — ID

Please make sure you have . . .

1. **FILLED this form completely.**
2. **ANSWERED Question 1a** on page 1.
3. **ANSWERED Questions 2 through 7** for each person you listed in Question 1a.
4. **ANSWERED Questions H1a through H7b** on page 3.

Also . . .

5. **PRINT here the name** of a household member who filled the form, the date the form was completed, and the telephone number at which a person in this household can be called.

Name			Date
Telephone number →	Area code	Number	○ Day ○ Night

Then . . .

6. **FOLD the form the way it was sent to you.**
7. **MAIL it back by October 6, 1989,** or as close to that date as possible, in the envelope provided; no stamp is needed.

NOTE – If you have listed more than 7 persons in Question 1a, please make sure that you have filled the form for the first 7 people. Then mail back this form.

Thank you very much.

Your Guide for the

1989 Special Survey Form

This guide gives helpful information on filling out your survey form.

U.S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS

D-3(CJ89)

How to Fill Out Your Survey Form

Please use a black lead pencil only. Black lead pencil is better to use than ballpoint or other pens. Most questions ask you to fill in the circle, or to print the information. See **Example** below.

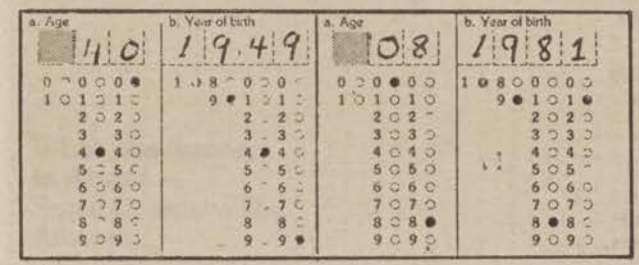
Make sure you print answers for everyone in this household. If someone in the household, such as a roomer or boarder, does not want to give you all the information for the form, print at least the person's name and answer questions 2 and 3.

There may be a question you cannot answer exactly. For example, you might not know the age of an elderly person or the price for which your house would sell. Ask someone else in your household; if no one knows, give your best estimate.

Instructions for individual questions begin on page 3 of this guide. They will help you to understand the questions and answer them correctly.

If you have a question about filling out the survey form or need assistance, call your regional office. **The telephone number is listed on the cover of the questionnaire.**

Example



Your Answers Are Confidential

The law under which this survey is taken (Title 13, U.S. Code) also provides that your answers are confidential. No one except census workers may see your completed form and they can be fined and/or imprisoned for any disclosure of your answers.

The same law that protects the confidentiality of your answers requires that you provide the information asked in this survey to the best of your knowledge.

This survey is being taken to help plan the 1990 decennial census. Information collected from the decennial census is used for a variety of statistical purposes. Census information is used to find out where funding is most needed for schools, health centers, highways, and other services. Census results are used by members of public and private groups--including community organizations--and by businesses and industries, as well as by agencies at all levels of government.

Instructions for Questions 1a through 7

1a. List everyone who lives at this address in question 1a. If you are not sure if you should list a person, see the rules on page 1 of the survey form. If you are still not sure, answer as best you can and fill in "Yes" for question H1a or H1b, as appropriate.

If there are more than seven people in your household, please list all the persons in question 1a, complete the form for seven people, and mail it back in the enclosed envelope.

b. If everyone listed in question 1a usually lives at another address(es), print the address(es) in 1b.

2. Fill one circle to show how each person is related to the person in column 1.

If **Other relative** of the person in column 1, print the exact relationship such as son-in-law, daughter-in-law, grandparent, nephew, niece, mother-in-law, father-in-law, cousin, and so on.

If the **Stepson/stepdaughter** of the person in column 1 also has been legally adopted by the person in column 1, mark **Stepson/stepdaughter** but do not mark **Natural-born or adopted son/daughter**. In other words, **Stepson/stepdaughter** takes precedence over **Adopted son/daughter.**

4. Fill ONE circle for the race each person considers himself/herself to be.

If you fill the **Indian (Amer.)** circle, print the name of the tribe or tribes in which the person is enrolled. If the person is not enrolled in a tribe, print the name of the principal tribe(s).

If you fill the **Other API** circle [under **Asian or Pacific Islander (API)**], **only** print the name of the group to which the person belongs. For example, the **Other API** category includes persons who identify as Burmese, Fijian, Hmong, Indonesian, Laotian, Bangladeshi, Pakistani, Tongan, Thai, Cambodian, Sri Lankan, and so on.

If you fill the **Other race** circle, be sure to print the name of the race.

If the person considers himself/herself to be **White, Black or Negro, Eskimo or Aleut, fill one circle only. Please do not print the race in the boxes.**

The **Black or Negro** category also includes persons who identify as African-American, Afro-American, Haitian, Jamaican, West Indian, Nigerian, and so on.

All persons, regardless of citizenship status, should answer this question.

5. Print age at last birthday in the space provided (print "00" for babies less than 1 year old). Fill in the matching circle below each box. Also, print year of birth in the space provided. Then fill in the matching circle below each box. For an illustration of how to complete question 5, see the **Example** on page 2 of this guide.

6. If the person's only marriage was annulled, mark **Never married**.

7. A person is of Spanish/Hispanic origin if the person's origin (ancestry) is Mexican, Mexican-Am., Chicano, Puerto Rican, Cuban, Argentinean, Colombian, Costa Rican, Dominican, Ecuadoran, Guatemalan, Honduran, Nicaraguan, Peruvian, Salvadoran, from other Spanish-speaking countries of the Caribbean or Central or South America, or from Spain.

If you fill the **Yes, other Spanish/Hispanic** circle, print one group.

A person who is not of Spanish/Hispanic origin should answer this question by filling the **No (not Spanish/Hispanic)** circle. Note that the term **"Mexican-Am."** refers only to persons of Mexican origin or ancestry.

All persons, regardless of citizenship status, should answer this question.

Instructions for Questions H1a through H6

H1a. Refer to the list of persons you entered in question 1a on page 1 If you left anyone out of your list because you were not sure if the person(s) should be listed, answer question H1a as **Yes**. Then enter the name(s) and reason(s) why you did not list the person(s) on the lines provided. Otherwise, answer question H1a as **No**.

b. If you included anyone on your list even though you were not sure that you should list the person(s), answer question H1b as **Yes**. Then enter the name(s) and reason(s) why you listed the person(s) on the lines provided. Otherwise, answer question H1b as **No**.

H2. Fill only one circle.

Count all occupied and vacant apartments in the house or building. Do not count stores or office space.

Detached means there is open space on all sides, or the house is joined only to a shed or garage. *Attached* means that the house is joined to another house or building by at least one wall that goes from ground to roof. An example of **A one-family house attached to one or more houses** is a house in a row of houses attached to one another.

A mobile home or trailer that has had one or more rooms added or built onto it should be counted as a *one-family detached house;* a porch or shed is not considered a room.

H3. Count only whole rooms in your house, apartment, or mobile home used for living purposes, such as living rooms, dining rooms, kitchens, bedrooms, finished recreation rooms, family rooms, etc. Do not count bathrooms, kitchenettes, strip or pullman kitchens, utility rooms, foyers, halls, half-rooms, porches, balconies, unfinished attics, unfinished basements, or other unfinished space used for storage.

H4. Housing is owned if the owner or co-owner lives in it. Mark **Owned by you or someone in this household with a mortgage or loan** if the house, apartment, or mobile home is mortgaged or there is a contract to purchase. Mark **Owned by you or someone in this household free and clear (without a mortgage)** if there is no mortgage or other debt. If the house, apartment, or mobile home is owned but the land is rented, mark this question to show the status of the house, apartment, or mobile home.

Mark **Rented for cash rent** if any money rent is paid, even if the rent is paid by persons who are not members of your household, or by a federal, state, or local government agency.

Mark **Occupied without payment of cash rent** if the unit is **not** owned or being bought by the occupants and if money rent is **not** paid or contracted. The unit may be owned by friends or relatives who live elsewhere and who allow occupancy without charge. A house or apartment may be provided as part of wages or salary. Examples are: caretaker's or janitor's house or apartment; parsonages; tenant farmer or sharecropper houses for which the occupants do not pay cash rent; or military housing.

H5a. Answer H5a and H5b if you live in a one-family house or mobile home; include only land which you own or rent.

b. A business is easily recognized from the outside; for example, a grocery store or barber shop. A medical office is a doctor's or dentist's office regularly visited by patients.

H6. If this is a house, include the value of the house, the land it is on, and any other structures on the same property. If the house is owned but the land is rented, estimate the combined value of the house and the land. If this is a condominium unit, estimate the value for your house or apartment including your share of the common elements. If this is a mobile home, include the value of the mobile home and the value of the land. If you rent the land, estimate the value of the rented land and add it to the value of the mobile home.

Instructions for Questions H7a and H7b

H7a. Report the rent agreed to or contracted for, even if the rent for your house, apartment, or mobile home is unpaid or paid by someone else.

If rent is paid:	Multiply rent by:
By the day	30
By the week	4
Every other week	2

If rent is paid:	Divide rent by:
4 times a year	3
2 times a year	6
Once a year	12

b. Answer **Yes** if meals are included in the monthly rent payment, or you must contract for meals or a meal plan in order to live in this building.

What the Survey Is About — Some Questions and Answers

How long will it take to complete this survey form?

It takes about 14 minutes, although the time varies with the number of people in a household.

How was I chosen for this survey?

We chose your housing unit, not you as a person, for this survey along with about 40,000 other housing units in several large cities and rural areas across the country.

Is this survey mandatory?

The same law that protects the confidentiality of your answers requires that you provide the information asked in this survey to the best of your knowledge.

Why is the Census Bureau taking the 1989 Special Survey?

The survey is being taken to help plan the 1990 decennial census. The most important reason for taking a decennial census is to determine how many representatives each state will have in Congress.

Why do we need a census?

The U.S. Constitution requires a census every 10 years so that seats in the U.S. Congress can be distributed fairly among the states based on population. Local and State officials use census data for forming voting districts. Teachers, business people, planners at every level, and the public--possibly including you--also use census results to learn about the people and housing conditions in our country.

[FR Doc. 89-15550 Filed 6-30-89; 8:45 am]
BILLING CODE 3510-07-C

REMEMBER

YOUR

ANSWERS

ARE CONFIDENTIAL

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Seafood Inspector License Application.

Form Number: OMB—0648–0139; Agency—NOAA 89–859.

Type of Request: Request for extension of a currently approved collection.

Burden: 20 respondents; 10 reporting hours; average hours per response—.5 hours.

Needs and Uses: Food inspectors for the Department of Agriculture or state agencies may be cross-licensed by NOAA to perform inspections of fishery products under the provisions of agreements with their agency. Applicants provide information needed to ensure applicants have the necessary qualifications.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Russell Scarato, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 27, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–15586 Filed 6–30–89; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request A Review: Not later than July 31, 1989, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

Antidumping Duty Proceeding	Period
Canada: Pig iron (A–122–020)	07/01/88–06/30/89
Canada: Certain dried heavy salted codfish (A–122–402)	07/01/88–06/30/89
German Democratic Republic: Solid urea (A–429–601)	07/01/88–06/30/89
Iran: Certain in-shell pistachios (A–507–502)	07/01/88–06/30/89
Japan: Malleable cast-iron pipe fittings (A–588–605)	07/01/88–06/30/89
Japan: High power microwave amplifiers and components thereof (A–588–005)	07/01/88–06/30/89
Japan: Fabric expanded neoprene laminate (A–588–404)	07/01/88–06/30/89
Japan: Synthetic methionine (A–588–041)	07/01/88–06/30/89
Romania: Solid urea (A–485–601)	07/01/88–06/30/89
Union of Soviet Socialist Republics: Solid urea (A–461–601)	07/01/88–06/30/89
Suspension Agreements	**Period**
Brazil: Certain forged steel crankshafts (C–351–609)	01/01/88–12/31/88
Countervailing Duty Proceeding	**Period**
European Communities: Sugar (C–408–046)	01/01/88–12/31/88
India: Industrial fasteners (C–533–066)	01/01/88–12/31/88
Uruguay: Leather wearing apparel (C–355–001)	01/01/88–12/31/88

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by July 31, 1989.

If the Department does not receive by July 31, 1989 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: June 26, 1989.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 89–15582 Filed 6–30–89; 8:45 am]

BILLING CODE 3510–DS–M

[A-357-007]

Carbon Steel Wire Rod From Argentina; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration; Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and tentative determination not to revoke in part.

SUMMARY: In response to a revocation request by the respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on carbon steel wire rod from Argentina. The review covers one manufacturer/exporter of this merchandise to the United States, Acindar Industria Argentina de Aceros S.A., and the period November 1, 1987 through October 31, 1988. There were no known shipments of this merchandise to the United States by Acindar during the period and there are no known unliquidated entries. The Department has tentatively determined not to revoke in part the antidumping duty order with respect to Acindar.

Interested parties are invited to comment on these preliminary results and tentative determination not to revoke in part.

EFFECTIVE DATE: July 3, 1989.

FOR FURTHER INFORMATION CONTACT: Alfredo R. Montemayor or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255/2923.

SUPPLEMENTARY INFORMATION:

Background

On November 23, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 46180) an antidumping duty order on carbon steel wire rod from Argentina. On November 30, 1988, the Department received a request for revocation in part of the antidumping duty order from Acindar Industria Argentina de Aceros S.A. ("Acindar"). We published a notice of initiation of the antidumping duty administrative review on January 31, 1989 (54 FR 4871). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nonenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of carbon steel wire rod. During the review period, such merchandise was classifiable under item 607.1700 of the Tariff Schedules of the United States. This merchandise is currently classificable under HTS item 7213.20.00, 7213.31.30, 7313.49.00, 7213.39.00, 7213.41.30 or 7213.50.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of carbon steel wire rod from Argentina, Acindar, and the period November 1, 1987 through October 31, 1988. There were no known shipments of this merchandise by this firm to the United States during the period.

Preliminary Results of the Review and Tentative Determination Not to Revoke in Part

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/ exporter	Time period	Margin (percent)
Acindar	11/1/87-10/31/88	119.11*

*No shipments during the period; margin from the antidumping duty order.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

As provided for by section 751(a)(1) of the Tariff Act, the Department shall require a cash deposit of estimated antidumping duties based on the above margin. For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipment occurred after October 31, 1988 and who is unrelated to the reviewed firm, a cash deposit of 119.11 percent shall be required. These deposit requirements are effective for all shipments of Argentine carbon steel wire rod entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Acindar requested partial revocation of the order, based on the fact that no carbon steel wire rod produced by Acindar had been shipped to the United States during the past four years. However, four years of no shipments is no longer a basis for revocation of an antidumping duty order. In accordance with § 353.25 of the Commerce regulations (54 FR 12780, March 28, 1989), the Department may revoke an order in part if a producer or reseller has sold the merchandise at not less than foreign market value for a period of at least three consecutive years, if the order is no longer of interest to interested parties, or if there exist other changed circumstances sufficient to warrant revocation. Since none of these conditions exist, the Department has tentatively determined not to revoke in part the antidumping duty order with respect to Acindar.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), and §§ 353.22 and 353.25 of the Commerce regulations (54 FR 12778; March 28, 1989) (to be codified at 19 CFR 353.22 and 353.25).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Date: June 26, 1989.

[FR Doc. 89-15583 Filed 6-30-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-029]

Certain Castor Oil Products From Brazil; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain castor oil products from Brazil. We preliminarily determine that for the period January 1, 1987 through December 31, 1987 the net subsidy is 0.27 percent *ad valorem*. We consider any rate below 0.50 percent *ad valorem* to be *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: July 3, 1989.

FOR FURTHER INFORMATION CONTACT: Jean Carroll Kemp or Ilene Hersher, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTAL INFORMATION: On November 2, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 42025) the final results of its last administrative review of the countervailing duty order on certain castor oil products from Brazil (41 FR 8634; March 16, 1976). On March 31, 1988, Sociedade Algodeira do Nordeste Brasileiro (SANBRA), an exporter of the merchandise, requested in accordance with the Commerce Regulations an administrative review of the order. We published the initiation on April 27, 1988 (53 FR 15083). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of Brazilian hydrogenated castor oil and 12-hydroxystearic acid. During the review period, such merchandise was classifiable under items 178.2000, 490.2650, and 490.2670 of the Tariff Schedules of the United States Annotated. Such merchandise is currently classifiable under HTS items 1516.10.10, 1516.20.90, 1517.90.40, 1519.11.00, 1519.12.00, 1519.19.40, 2915.70.00, and 2916.19.30. As with the TSUSA, the HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope.

The review covers the period January 1, 1987 through December 31, 1987 and 14 programs: (1) CACEX preferrential working capital financing for exports; (2) income tax exemption for export earnings; (3) the IPI export credit premium under BEFIEX; (4) export financing under CIC-OPCRE 6–2–6 (CIC-CREGE 14–11); (5) industrial enterprise loans (FST and EGF); (6) import duty and tax reductions under BEFIEX and CIEX; (7) preferential financing for trading companies under Resolution 883; (8) accelerated depreciation for Brazilian-made capital goods; (9) FINEX export financing; (10) FUNPAR; (11) PROEX; (12) PROSIM; (13) financing for the storage of merchandise destined for export (Resolution 330); and (14) "Green-Yellow" drawback.

Analysis of Programs

(1) CACEX Preferential Working Capital Financing for Exports Under this program, the Department of Foreign Commerce ("CACEX") of the Branco do Brasil provides short-term working capital financing to exporters at preferential rates. The loans have a term of one year or less. Two producers and exporters of the merchandise during the review period made interest payments on CACEX loans during the review period.

On August 21, 1984, Resolution 950 made CACEX working capital financing available through commercial banks at prevailing market rates, with interest due at maturity. It authorized the Branco do Brasil to pay the lending institution an "equilization fee," or rebate, of up to 10 percentage points over the commercial interest rate, which the lending institution passed on to the borrowers. On May 2, 1985, Resolution 1009 increased the equalization fee to 15 percentage points.

Since the interest charged on CACEX export financing under Resolutions 950 and 1009 is at prevailing market rates, this program would not be countervailable absent the equalization fee and the exemption from the IOF (a tax on financial transactions).

Therefore, the interest differential for those loans is equal to the equalization fee plus the 1.5 percent IOF. Because this program provides financing at preferential rates only to exporters, we preliminarily determine that it is countervailable.

We consider the benefit from short-term loans to occur when the borrower makes the interest payments. For CACEX loans on which interest was paid during the period of review, we multiplied the interest differential by the length of the loan and the loan principal. We allocated the result over each company's total exports. We then weight-averaged each company's benefit from this program by the company's proportion of exports to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.27 percent *ad valorem* for the period January 1, 1987 through December 31, 1987.

(2) Income Tax Exemption for Export Earnings Under this program, exporters of certain castor oil products are eligible for an exemption from income tax on the portion of their profits attributable to exports. According to Brazilian tax law, the tax-exempt fraction of profit is calculated as the ratio of export revenue to total revenue. Because this program provides tax exemptions that are limited to exporters, we preliminarily determine that it is countervailable.

The two companies under review reported operational losses and claimed no tax exemption benefits on the tax returns filed during the review period. Therefore, we preliminarily determine the benefit from this program to be zero for the period January 1, 1987 through December 31, 1987.

(3) Other Programs

We also examined the following programs and preliminarily determine that producers and exporters of certain castor oil products from Brazil did not benefit from them during the review period:

(1) The IPI export credit under BEFIEX;

(2) Export financing under CIC–OPCRE 6–2–6 (CIC-CREGE 14–11);

(3) Industrial enterprise loans (FST and EGF);

(4) Import duty and tax reductions under BEFIEX and CIEX;

(5) Preferential financing for trading companies under Resolution 883;

(6) Accelerated depreciation for Brazilian-made capital goods;

(7) FINEX export financing;

(8) FUNPAR;

(9) PROEX;

(10) PROSIM;

(11) Financing for the storage of merchandise destined for export (Resolution 330); and

(12) "Green-Yellow" drawback.

Preliminary Results of Review

As a result of the review, we preliminarily determine the net subsidy to be 0.27 percent *ad valorem* for the period January 1, 1987 through December 31, 1987. We consider any rate below 0.50 percent *ad valorem* to be *de minimis*.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1987 and on or before December 31, 1987.

The Department intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication or the following workday. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of is analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751 (a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52354) (to be codified at 19 CFR 355.22).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–15584 Filed 6–30–89; 8:45 am]

BILLING CODE 3510-DS-M

[C–614–501]

Low-Fuming Brazing Copper Rod and Wire From New Zealand; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On May 1, 1989, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on low-fuming brazing copper rod and wire from New Zealand. We have now completed that review and determine the total bounty or grant for the period August 1, 1987 through July 31, 1988 to be 0.12 percent *ad valorem*. We consider any rate less than 0.50 percent to be *de minimis*.

EFFECTIVE DATE: July 3, 1989.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Ilene Hersher, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 18564) the preliminary results of its administrative review of the countervailing duty order on low-fuming brazing copper rod and wire from New Zealand (50 FR 31638, August 5, 1985). The Department has now completed that administrative review in accordance with section 751(a) of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of New Zealand low-fuming brazing copper rod and wire, principally of copper and zinc alloy ("brass"), of varied dimensions in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated. The chemical composition of the products under investigation is defined by Copper Development Association standards 680 and 681. During the period of review, such merchandise was classifiable under item numbers 612.6205, 612.7220 and 653.1500 of the Tariff Schedules of the United States Annotated. Such merchandise is currently classifiable under item numbers 7407.21.50, 7408.21.00, 8311.30.60 and 8311.90.00 of the Harmonized Tariff Schedule. The written description remains dispositive of the scope.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

As a result of our review, we determine the total bounty or grant to be 0.12 percent *ad valorem* for the period August 1, 1987 through July 31, 1988. The Department considers any rate less than 0.50 percent to be *de minimis*.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all entries of this merchandise exported on or after August 1, 1987, and on or before July 31, 1988.

Further, the Department will instruct the Customs Service to waive deposits of estimated countervailing duties on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52354) (to be codified at 19 CFR 355.22).

Date: June 26, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–15585 Filed 6–30–89; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications; Denver, CO

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3-year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $184,260 in Federal funds and a minimum of $32,516 in non-Federal contributions for the budget period January 1, 1990 to December 31, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Denver, Colorado standard metropolitan statistical area (SMSA).

The funding instrument for the MBDC will be a cooperative agreement.

Competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to two additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

Closing Date: The closing date for applications is August 24, 1989. Applicants should mail the completed applications to the office specified in the project announcement. MBDA will accept only those applications (1) Which are received by the closing date or (2) which show acceptable evidence of mailing on or before the closing date. Acceptable evidence consists of (1) a legible U.S. Postal Service postmark or (2) a legible mail or courier service receipt dated on or before the closing date. Applications must be post marked on or before August 24, 1989.

ADDRESS: Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242-0790 (214) 767-8001.

FOR FURTHER INFORMATION CONTACT: Darnecia Tyler, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development; Catalog of Federal Domestic Assistance)

Date: June 22, 1989.

Victor Casaus,

Deputy Regional Director, Dallas Regional Office.

Section B—Project Specifications

(To be completed by the Regional Offices)

Project Identification

1. Program Number and Title: 11.801 American Indian Business Development.
2. Project Name: (Geographic Area or SMSA) Denver IBDC.
3. Project Identification Number: 08-10-90001-01.

Project Duration

1. Budget Period (Check One): First X Second_____Third_____.
2. Project Start Date: January 1, 1990.
3. Project End Date: December 31, 1990.
4. Project Duration (Months): Twelve.

Project Cost

1. Required Federal Funding Level	$184,260
Minimum Non-Federal Contribution	32,516
3. Total Project Cost	216,776

Project Minimum Performance Goal Levels

1. Combined Financial Package and Procurement Minimum Goal Level	$12,454,000
2. Hours of M&TA Minimum Goal Level	125,000
3. Number of Clients Minimum Goal Level	125

Other Project Specifications

1. Closing Date for Submission of this Application: August 24, 1989.
2. *Geographic Specification:* The Indian Business Development Center shall offer assistance in the geographic area of: Denver, Colorado Standard Metropolitan Statistical Area.
3. *Eligibility Criteria:* There are no eligibility restrictions for this project, except that applicants must have documented experience in providing business development services to American Indian businesses and individuals, and have working relationships with organizations and agencies, and tribal governments unique to American Indians. Eligible applicants may include individuals, non-profit organizations, for-profit firms, American Indian tribes, state and local governments, and educational institutions.
4. *Budget Period:* The competitive award period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The IBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the IBDC's performance and Agency priorities.

[FR Doc. 89-15347 Filed 6-30-89; 8:45 am]

BILLING CODE 3510-21-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Textile and Apparel Categories With Harmonized Tariff Schedule of the United States Annotated; Changes to the 1989 Correlation

June 28, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Changes to the 1989 correlation.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Lori Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

The Correlation: Textile and Apparel Categories with Harmonized Tariff Schedule of the United States (1989) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other

vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreements program. The attached list includes some Harmonized Tariff Schedule numbers that will be published in the fourth supplement of the Harmonized Tariff Schedule of the United States. This Correlation should be amended to reflect the changes indicated below:

Category	Changes to the 1989 correlation
229	Delete 5810.10.0000.
	Add 5810.10.0090—embroidery without visible ground, other than labels and badges.
	Delete 5810.92.0010.
	Add 5810.92.0050—other than labels, badges, emblems and motifs, on a ground fabric weighing less than 100 g/m² and of a width of more than 223 centimeters of man-made fiber.
	Add 5810.92.0080—other than labels, badges, emblems and motifs of man-made fiber.
	Delete 5810.92.0090.
237	Add 6103.42.2015—boys' sizes 2–7 bib and brace overalls, not insulated for cold weather protection.
331	Delete 6216.10.1520.
333	Add 6103.22.0020—men's or boy's jackets and blazers of cotton described in heading 6103.
338	Delete 6109.10.0010.
	Add 6109.10.0012—men's other cotton T-shirts.
	Add 6109.10.0014—boys' other cotton T-shirts.
	Delete 6109.10.0015.
	Add 6109.10.0018—men's tank tops and other singlets of cotton.
	Add 6109.10.0023—boy's tank tops and other singlets of cotton.
	Delete 6109.10.0025.
	Add 6109.10.0027—men's or boys' similar garments to tank tops and singlets, of cotton.
	Delete 6109.10.0030.
	Delete 6109.10.0035.
350	Delete 6108.91.0010.
	Delete 6108.91.0020.
	Add 6108.91.0015—women's bathrobes, dressing gowns and similar articles, of cotton.
	Add 6108.91.0025—girls' bathrobes, dressing gowns and similar articles, of cotton.
352	Add 6108.91.0005—women's or girls' cotton underpants.
	Add 6109.10.0007—men's or boys' singlets, all white, without pockets, trim or embroidery, of cotton.
	Add 6109.10.0009—men's or boys' other cotton underwear.
	Delete 6109.10.0020.
353	Add 6211.20.1010—men's or boys' anoraks including ski jackets, windbreakers and similar articles, of cotton.
359	Delete 6103.42.2020.
	Add 6103.42.2025—boys' bib and brace overalls, not insulated for cold weather protection.
	Add 6103.42.2005—men's or boys' bib and brace overalls, not insulated for cold weather protection.
	Add 6211.12.3003—women's cotton woven swimwear.
	Add 6211.12.3005—girl's cotton woven swimwear.
	Delete 6211.12.3020.
362	Add 9404.80.8000—articles of bedding and similar furnishings of cotton, not containing any embroidery, lace, braid, edging, trimming, piping, exceeding 6.35 mm of applique work.
363	Delete 6302.91.001.
	Add 6302.91.0015—cotton towels, of pile or tufted construction, other than dish towels.
	Add 6302.91.0035—jacquard figured towels of cotton, not of pile or tufted construction.
	Add 6307.90.9040—cotton towels of pile or tufted construction.
369	Add 6302.91.0005—cotton dish towels, of pile or tufted construction.
	Add 6302.91.0025—toilet linen and kitchen linen, other than towels, of pile or tufted construction.
	Delete 6302.91.0020.
	Delete 6302.91.0030.
	Delete 6302.91.0040.
	Add 6302.91.0045—dish towels not of pile or tufted construction, not jacquard figured.
	Add 6302.91.0050—towels not of pile or tufted construction, other than dish towels.
	Add 6302.91.0060—other toilet and kitchen linen.
414	Delete 6001.99.0000.
	Add 6001.99.0090—pile fabric of other textile material, other than containing 85% or more by weight of silk or silk waste.
433	Add 6103.21.0020—men's or boys' garments described in heading 6101 of wool or fine animal hair.
	Add 6203.23.0015—men's or boys' jackets and blazers described in heading 6203, containing 36% or more by weight of wool or fine animal hair.
438	Delete 6110.10.1050.
	Delete 6110.10.1060.
445	Add 6110.10.1030—vests, wholly of cashmere, other than sweater vests, men's or boys'.
	Add 6110.10.1050—men's or boys', similar articles other than sweaters or vests, wholly of cashmere.
446	Add 6110.10.1040—women's or girls' vests, other than sweater vests, wholly of cashmere.
	Add 6110.10.1060—women's or girls' similar articles, other than sweaters and vests, wholly of cashmere.
459	Delete 6110.10.1030.
	Delete 6110.10.1040.
606	Delete 5402.42.0000.
619	Add 5407.71.0010—woven fabrics of synthetic filament yarn, unbleached or bleached, weighing not more than 170 g/m² containing 85% or more by weight of polyester filaments.
	Add 5407.72.0010—woven fabrics of synthetic filament yarn, dyed, weighing not more than 170 g/m² containing 85% or more by weight of polyester filaments.
	Add 5407.73.2010—woven fabrics of synthetic filament yarn, of yarns of different colors weighing not more than 170 g/m² containing 85% or more by weight of polyester filaments.
	Add 5407.74.0010—woven fabrics of synthetic filament yarn, printed, weighing not more than 170 g/m² containing 85% or more by weight of polyester filaments.

Category	Changes to the 1989 correlation
620	Add 5407.71.0020—woven fabrics of synthetic filament yarn, unbleached or bleached, weighing not more than 170 g/m².
	Delete 5407.71.0030.
	Add 5407.72.0020—woven fabrics of synthetic filament yarn, dyed, weighing not more than 170 g/m².
	Delete 5407.72.0030.
	Add 5407.73.2020—woven fabrics of synthetic filament yarn, of yarns of different colors weighing not more than 170 g/m².
	Delete 5407.73.2030.
	Add 5407.74.0020—woven fabrics of synthetic filament yarn, printed, weighing not more than 170 g/m².
	Delete 5407.74.0030.
631	Delete 6116.10.4520.
	Add 6116.10.4525—gloves, mittens and mitts knitted or croacheted, impregnated coated or covered with plastics or rubber, with fourchettes, subject to man-made fiber restraints.
	Delete 6216.00.4830.
	Add 6216.00.4835—gloves, mittens and mitts, impregnated coated or covered with plastics or rubber, not containing 36% or more by weight of wool or fine animal hair, without fourchettes, of man-made fiber.
	Delete 6216.00.4840.
	Add 6216.00.4845—gloves, mittens and mitts, impregnated coated or covered with plastics or rubber, not containing 36% or more by weight of wool or fine animal hair, without fourchettes, of man-made fiber.
	Delete 6216.00.2520.
	Add 6216.00.2525—gloves, mittens and mitts, impregnated coated or covered with plastics or rubber, containing 50% or more by weight of cotton, man-made fibers or any combination, subject to man-made fiber restraints.
	Delete 6216.00.3020.
	Add 6116.00.3025—gloves, mittens and mitts, impregnated, coated or covered with plastics or rubber, with fourchettes, subject to man-made fiber restraints.
633	Add 6103.23.0037—men's or boys' jackets and blazers described in heading 6103, of synthetic fibers.
	Add 6203.23.0055—men's or boys' jackets and blazers described in heading 6203 of synthetic fibers.
	Add 6203.29.2020—men's and boys' jackets and blazers described in heading 6103 of artificial fibers.
638	Delete 6109.90.1005.
	Add 6109.90.1007—other men's T-shirts of man-made fiber.
	Add 6109.90.1009—other boys' T-shirts of man-made fiber.
	Delete 6109.90.1010.
	Add 6109.90.1013—men's tank tops and singlets of man-made fiber.
	Delete 6109.90.1015.
	Delete 6109.90.1020.
	Add 6109.90.1025—boys' tank tops and singlets of man-made fiber.
	Delete 6109.90.1040.
	Add 6109.90.1045—men's or boys' similar garments to T-shirts and tank tops, of man-made fiber.
650	Delete 6108.92.0010.
	Add 6108.92.0015—women's bathrobes, dressing gowns and similar articles, of man-made fiber.
	Delete 6108.92.0020.
	Add 6108.92.0025—girls' bathrobes, dressing gowns and similar articles, of man-made fiber.
652	Add 6108.92.0005—women's or girls' man-made fiber underpants.
	Add 6109.90.1003—men's or boy's man-made fiber underwear.
659	Delete 6203.42.2005.
	Delete 6215.10.0020.
	Add 6215.10.0025—ties, bow ties and cravats, of silk or silk waste, containing 50% or more by weight of textile materials others than silk or silk waste.
	Add 6210.10.4015—garments made up of fabrics of heading 5602, or 5603, other than non-woven disposable apparel designed for use in hospitals, clinics, laboratories or contaminated areas, overalls and coveralls.
	Delete 6210.10.4020.
	Add 6210.10.4025—garments of heading 5602, or 5603, ohter than non-woven disposable apparel designed for use in hospitals, clinics, laboratories or contaminated areas, other than overalls and coveralls.
	Add 6505.90.8060—hats and other headgear, other than non-woven disposable headgear, without peaks or visors.
	Delete 6505.90.8075.
669	Delete 5810.10.0010.
	Delete 5810.92.0010.
	Add 5810.92.0030—man-made fiber labels.
858	Delete 6215.10.0030.
	Add 6215.10.0090—ties, bow ties and cravats, of silk or silk waste, other than containing 70% or more by weight of silk or silk waste.
859	Add 6211.12.3025—women's or girls' swimwear other than containing 70% or more by weight of silk or silk waste.
899	Delete 6002.99.0080.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-15581 Filed 6-30-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary of Defense.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education (ACDE). It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the DoDDS ACDE coordinator.

DATES: August 4, 1989, 9 a.m. to 5 p.m.; August 5, 1989, 9 a.m. to 4:00 p.m.

ADDRESS: August 4, 1989, The Pentagon, Room 3E869, Washington, DC. August 5, 1989, Embassy Suites Hotel, Georgetown Room, 1402 South Eads Street, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Witcher, DoDDS, 2461 Eisenhower Avenue, Alexandria, Virginia, 22331-1100, Telephone: (202) 325-0867.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents'

Education is established under title XIV, section 1411, of Public Law 95–561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b) (3)–(5), of Pub. L. 99–145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is co-chaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Secretaries, 12 members are appointed jointly by the Secretaries. Members include representatives of educational institutions and agencies, professional employee organizations, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDDS, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes information on the School Report Card (parent survey), recruitment of minority personnel, counselor/guidance services, the talented and gifted program, the teacher appraisal system, staff development, development of a homework policy, bus safety, communication throughout the system, and responses to the recommendations made by the Council during its April meeting.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 27 1989.

[FR Doc. 89–15567 Filed 6–30–89; 8:45 am]

BILLING CODE 3810–01–M

Defense Intelligence Agency

Membership of the DIA Performance Review Committee

AGENCY: Defense Intelligence Agency (DoD).

ACTION: Notice of membership of the DIA performance review committee (PRC).

SUMMARY: This notice announces the appointment of the PRC of the Defense Intelligence Agency. The PRC's jurisdiction includes the entire Defense Intelligence Senior Executive Service (DISES). Publication of PRC membership is required by 10 U.S.C. 1601(a)(4).

The PRC provides fair and impartial review of Defense Intelligence Senior Executive Service (DISES) performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Intelligence Agency.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Michael T. Curriden, Human Resources Manager, Policy and Programs Division, Directorate for Human Resources, Defense Intelligence Agency (RHR–5), 3100 Clarendon Boulevard, Arlington, VA 22201–5322, (703) 284–1342.

Primary Members

Mr. Gordon F. Negus, Executive Director (Chairman)
Mr. Steven T. Schanzer, Deputy Director for Information Systems
Mr. Michael F. Munson, Deputy Director for Resources
RADM Edward D. Sheafer, Jr., Deputy Director for JCS Support
Brig Gen Walter C. Hersman, Deputy Director for Command Support and Plans

Alternate Members

Mr. Charles P. Duecy, Vice Assistant Deputy Director for Estimates
Mr. Lewis A. Prombain, Comptroller
Dr. William A. Naughton, Defense Intelligence Officer for Latin America
Mr. Charles W. Roades, Vice Deputy Director for Attaches and Operations
BG Frank Partlow, Assistant Deputy Director for Estimates

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 27, 1989.

[FR Doc. 89–15568 Filed 6–30–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TM89–12–20–000; RP89–197–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

June 26, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on June 20, 1989, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets:

Proposed to be effective March 1, 1989

Substitute Twenty-fifth Revised Sheet No. 204

Proposed to be effective April 1, 1989

Second Substitute Twenty-sixth Revised Sheet No. 204

Proposed to be effective May 1, 1989

Twenty-seventh Revised Sheet No. 204
Sixth Revised Sheet No. 373
Sixth Revised Sheet No. 374

Proposed to be effective June 1, 1989

Twenty-eighth Revised Sheet No. 204
Seventh Revised Sheet No. 373

Proposed to be effective July 1, 1989

Twenty-ninth Revised Sheet No. 204

Algonquin states that it is filing the above listed tariff sheets to track rate changes filed for by Transcontinental Gas Pipeline Corporation ("Transco") and National Fuel Gas Supply Corporation ("National") in the services underlying Algonquin's Rate Schedule F–3 pursuant to Section 7 of Rate Schedule F–3 and as permitted by Commission Order No. 500.

Algonquin states that it is filing to incorporate and pass-through Transco's Commodity Producer Settlement Payment-II ("PSP–II") charge (0.08 cents per MMBtu, effective May 1, 1989) and Commodity Litigant Producer Settlement Payment ("LPSP") charge (1.0 cents per MMBtu, effective June 1, 1989) in its rates and tariff language. Additionally, Algonquin states that it is filing to reduce the Commodity Producer Settlement Payment ("PSP") charge by 0.001 cents per MMBtu, effective March 1, 1989. All as more fully set forth in Algonquin's instant filing.

Furthermore, Algonquin maintains that it is filing, under Rate Schedule F–3, to track rate changes made by its pipeline supplier, National, in National's Rate Schedule CD. The first such change, effective June 1, 1989, represents a decrease in the commodity component of 5.67 cents per MMBtu. The second rate change, effective July 1, 1989, decreases the demand component by 44.0 cents per MMBtu and increases the commodity component by 33.72 cents per MMBtu. All as more fully set forth in Algonquin's instant filing.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 3, 1989. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants, parties to the proceeding. Any person wishing to become a party must file a motion to

intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15569 Filed 6-30-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-98-006 and RP89-133-003]

Colorado Interstate Gas Co.; Compliance Filing

June 26, 1989.

TAKE NOTICE that Colorado Interstate Gas Company ("CIG"), on June 20, 1989, tendered for filing the following tariff sheet to revise its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 61G11

CIG states that the above-referenced tariff sheet is being filed in compliance with the Commission's Orders issued in these dockets and that the filing constitutes an adjustment filing as defined by CIG's FERC Gas Tariff. Specifically, the filing reflects adjustments to the take-or-pay Buyout-Buydown Costs and Surcharges by which those costs are recovered, interest on unamortized costs, and the related billing options elected by CIG's customers.

CIG states that copies of the filing were served upon all of the parties to this proceeding and affected state commissions as well as all of CIG's firm sales customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before July 3, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-15570 Filed 6-30-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3610-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 12, 1989 through June 16, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-COE-L900231-WA, Rating LO, North and South Puget Sound Unconfined Open-Water Disposal for Dredged Material, Phase II, Site Designation, Section 10 and 404 Permits, Whatcom, Skagit, Challam and Pierce, Counties WA.

Summary

EPA has no objection to the project as described in the draft EIS.

ERP No. D-HUD-C85042-PR, Rating EC2, Encantada Residential Development, Mortgage Insurance, Dos Bocas Ward, Trujillo Alto, PR.

Summary

EPA has concerns with respect to soil excavation and disposal, sewage treatment capacity, the availability of adequate water supply, and the drainage system. Additionally, EPA has concerns that the project will induce traffic and that no mitigation is proposed. Accordingly, EPA has requested that additional information be provided in the final EIS to address these issues.

ERP No. D-NPS-L67025-AK, Rating E01, Yukon-Charley Rivers National Preserve, Mining Operations Management Plan, Implementation, AK.

Summary

EPA feels the draft EIS adequately addresses potentially significant environmental impacts. However, further delineation of the relative impacts and controls which distinguish the alternatives should be provided. The proposed action entails significant cumulative environmental impacts that must be avoided through appropriate controls.

Final EISs

ERP No. F-COE-K25005-CA, Ox Mountain Sanitary Landfill Expansion, Apanolio Canyon Site, 404 Permit, Apanolio Creek, San Mateo County, CA.

Summary

EPA expressed its continuing objections with the proposed filling of Apanolio Canyon, which would result in the degradation of wetlands and the loss of riparian and fishery habitat values. EPA stated that the proposed expansion of the Ox Mountain Sanitary Landfill into Apanolio Canyon does not comply with Clean Water Act 404(b)(1) Guidelines. EPA strongly recommended that the Army Corps of Engineers deny the permit application to fill Apanolio Creek Canyon. EPA also requested that the Corps prepare a supplemental EIS because coordination with the Corps indicates that the mitigation proposal in the final EIS is undergoing significant modification.

ERP No. FS-COE-L32003-WA, Grays Harbor Navigation Improvement Project, Updated Description of Impacts, Implementation, Chehalis and Hoquiam Rivers, Grays Harbor County, WA.

Summary

EPA has no objection to the project as described in this document.

Dated: June 27, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-15578 Filed 6-30-89; 8:45 a.m.]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Title: Port Everglades Authority Terminal Agreement.

Parties: Port Everglades Authority Sea-Land Service, Inc.

Synopsis: The Agreement extends the term of the basic lease on a month-to-month basis effective June 5, 1989, until a pending lease agreement has been fully executed and approved.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: June 27, 1989.

[FR Doc. 89-15577 Filed 6-30-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Revocations; Tropical Customs Brokers et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2622.

Name: Tropical Customs Brokers, Inc.

Address: 7967 NW. 33rd Avenue, Miami, FL 33122.

Date Revoked: June 1, 1989.

Reason: Failed to maintain a valid surety bond.

License Number: 2602.

Name: Andrew Buchanan Rogers.

Address: 217 Forest Trails, Isle-of-Palms, SC 29451.

Date Revoked: June 7, 1989.

Reason: Failed to maintain a valid surety bond.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 89-15574 Filed 6-30-89; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement 13655.892]

Grants for Supportive and Nutritional Services to Older Native Hawaiians

AGENCY: Administration on Aging (AoA), Department of Health and Human Services.

ACTION: Announcement of potential availability of funds and invitation to submit applications under the Older Americans Act, Title VI, Grants for Native Americans, Part B—Native Hawaiian Program.

SUMMARY: The Administration on Aging will accept applications for potential awards in Fiscal Year 1989 under the Older Americans Act, Title VI, Grants for Native Americans, Part B—Native Hawaiian Program. Although there are no such funds currently available, AoA expects funds to be available in Fiscal Year 1989 through reprogramming of funds by Congress. If the reprogramming action is approved, the grants will be awarded by September 30, 1989.

DATE: Application must be received on or before August 10, 1989.

ADDRESS: Applications must be sent to the Department of Health and Human Services, Office of Human Development Services, Acquisition and Assistance Management Branch, Hubert H. Humphrey Building, Room 341-F, 200 Independence Avenue, SW., Washington, DC 20201, Attention: Margaret Tolson, Grants Officer.

FOR FURTHER INFORMATION CONTACT: Dr. Frederick J. Luhmann, Acting Director, Office for American Indian, Alaskan Native, and Native Hawaiian Programs, Administration on Aging, Department of Health and Human Services, Wilbur J. Cohen Federal Building, Room 4752, 330 Independence Avenue, SW., Washington, DC 20201, (202) 245-2957.

SUPPLEMENTARY INFORMATION:

Part I—Background and Program Purpose

The Administration on Aging is responsible for administering the Older Americans Act which provides for the delivery of supportive and nutritional services to older Americans who are 60 years of age or older. The Older Americans Act Amendments of 1987 established a new Part B under Title VI of the Act for the provision of supportive and nutrition services to Native Hawaiian elders who are 60 years of age or older.

The Act provides that a public or nonprofit private organization having the capacity to provide services for Native Hawaiians is eligible for assistance under Title VI Part B if the organization will serve at least 50 Native Hawaiian individuals who have attained 60 years of age or older, and the organization demonstrates the ability to deliver supportive services and nutrition services.

For the purposes of Title VI Part B, the term "Native Hawaiian" means an individual any of whose ancestors were natives of the area which consists of the Hawaiian Islands prior to 1978.

If the funds for Fiscal Year 1989 become available, AoA expects to make awards to organizations which will provide supportive and nutritional services to older Native Hawaiians.

Nutritional services include congregate meals and home-delivered meals. Supportive services include information and referral, transportation, chore services, and other supportive services which contribute to the welfare of older Native Hawaiians, as listed in Section 321 of the Older Americans Act. Applicant organizations must provide for establishing and maintaining information and referral services to assure that older Native Hawaiians to be served by the assistance made available will have reasonably convenient access to such services. The information and referral services must be available for older Native Hawaiians living in the geographic boundaries of the Title VI Part B service area proposed by the applicant organization and approved by the Commissioner.

Organizations receiving funds to provide services to older Native Hawaiians shall assure that all activities will conducted in close coordination with the State Agency and the Area Agency on Aging.

Part II—Eligibility and Funding Information

A. Eligibility of an Organization to Receive a Grant

A public or private nonprofit organization having the capacity to provide services for Native Hawaiians is eligible to receive a grant only if the organization will serve at least 50 Native Hawaiians who have attained 60 years of age or older, and the organization demonstrates the ability to deliver supportive and nutritional services.

B. Available Funds

Funds under Title VI Part B for Fiscal Year 1989 are dependent on the availability or reprogrammed funds in Fiscal Year 1989. Reprogrammed funds for Title VI may result in as much as $1,365,000 for Title VI Part B. The amount of grants to individual organizations will depend on the amount of funds available, the number of eligible applicants, the number of older Native Hawaiians to be served by each applicant, and the geographical boundaries of the proposed service areas.

Information is given below as an example of possible funding levels based on varying numbers of Hawaiian elders over age 60.

Population range (number of older Hawaiians age 60 or older in a specified area of the State)	Possible award amount
50 to 100	$38,411
101 to 200	46,422
201 to 300	54,844
301 to 400	63,266
401 to 500	71,688
501 +	80,110

In the event that a State agency, or a private nonprofit organization applying on behalf of the entire State with the recommendation of the State Agency on Aging, should make application under Title VI Part B, the above examples would not apply. Rather the applicant agency would use the total number of older Hawaiians in developing their budget request. AoA would review such applications on a case by case basis.

For grants made in Fiscal Year 1989, the budget period will be one year, September 30, 1989 through September 29, 1990. The project period will be for three years, September 30, 1989 through September 29, 1992, subject to availability of funds.

Part III—Application Process

A. Application Materials

Application materials are included with this announcement. Applicant organizations must complete the application forms, including the Form 424, Application for Federal Assistance; Form 424–A, Budget Information—Non-Construction Programs; and Form 424–C, Assurances—Non-Construction Programs. Applicants must also complete the narrative in the Instructions for Completing the Program Narrative Statement. These are all attached as Appendix A. Two additional assurances must also be included: the Certification Regarding Drug-Free Workplace Requirements in Appendix B, and the Certification Regarding Debarment in Appendix C.

As required by section 624(a) of the Older Americans Act, each application shall—

(1) Provide that the organization will evaluate the need for supportive and nutrition services among older Native Hawaiians to be represented by the organization;

(2) Provide for the use of such methods of administration as are necessary for the proper and efficient administration of the program to be assisted;

(3) Provide assurances that the organization will coordinate its activities with the State agency on aging;

(4) Provide that the organization will make such reports in such form and containing such information as the Commissioner may reasonably require, and comply with such requirements as the Commissioner may impose to assure the correctness of such reports;

(5) Provide for periodic evaluation of activities and projects carried out under the application;

(6) Establish objectives, consistent with the purpose of this title, toward which activities described in the application will be directed, identify obstacles to the attainment of such objectives, and indicate the manner in which the organization proposes to overcome such obstacles;

(7) Provide for establishing and maintaining information and referral services to assure that older Native Hawaiians to be served by the assistance made available under this part will have reasonably convenient access to such services;

(8) Provide a preference for Native Hawaiians 60 years of age and older for full or part-time staff positions wherever feasible;

(9) Provide that any legal or ombudsman services made available to older Native Hawaiians represented by the organization will be substantially in compliance with the provisions of title III relating to the furnishing of similar services; and

(10) Provide satisfactory assurance that the fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part to the organization, including any funds paid by the organization to a recipient of a grant or contract.

Further information about requirements regarding applications are found in the Regulations, at 45 CFR 1328.19 (issued August 31, 1988). Copies of the law and regulations may be obtained upon request to the Office for American Indian, Alaskan Native, and Native Hawaiian Programs listed above.

B. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, P. L. 96–511, the Department is required to submit to OMB for review and approval and reporting and record keeping requirements and regulations including program announcements. This program announcement does not contain any information collection requirements beyond those approved by OMB.

C. Executive Order 12372–Notification Process

The requirements for review of applications by State Single Points of Contact under Executive Order 12372 do not apply to this program. However, applicants are required to coordinate the development of the application with the State Agency on Aging in their State.

D. Closing Date for the Submission of Applications

The closing date for the submission of applications under this announcement is August 10, 1989.

E. Funding Decisions

Awards will be made by the Commissioner on Aging. Funding decisions will be announced as soon as possible.

Dated: June 20, 1989.

Joyce T. Berry,

Acting Commissioner on Aging.

Approved: June 26, 1989.

Louis W. Sullivan.

Secretary.

BILLING CODE 4130-01-M

APPENDIX A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:
ADMINISTRATION ON AGING
DEPARTMENT OF HEALTH AND HUMAN SERVICES

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 1 3 . 6 5 5

TITLE: GRANTS FOR SUPPORTIVE AND NUTRITIONAL SERVICES TO OLDER NATIVE HAWAIIANS

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project
9-30-89	9-29-92		

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☒ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

BILLING CODE 4130-01-C

SF 424B (4-88) Back

Appendix A–1—Instructions for Completing the Program Narrative Statement

To accompany Form SF 424

Title VI Part B of the Older Americans Act

Application for Grant for Supportive and Nutritional Services to Older Native Hawaiians

Applications must meet the requirements of Title VI Part B of the Older Americans Act and Title 45 Part 1328 of the Code of Federal Regulations. The narrative must include the following information in any format selected by the applicant organization.

A. OBJECTIVE AND NEED FOR ASSISTANCE

The application shall establish objectives consistent with the requirements in Section 624(a)(6) of the Act.

B. RESULTS OR BENEFITS EXPECTED

The application should describe the results or benefits expected from each service proposed.

C. APPROACH

(1) *Description and Method of Delivery of Each Service*

The application must describe each service to be provided under this grant.

(a) Nutrition

Nutrition services may be provided. If they are to be provided, there should be a description of the methods, facilities, and staff to be used in preparing, serving, and delivering meals, and the approximate number of persons to be served.

(b) Information and Referral

The applicant must provide for establishing and maintaining information and referral services to assure that older Native Hawaiians to be served by the assistance made available will have reasonably convenient access to such services. The information and referral services must be available for older Native Hawaiians living in the Title VI Part B service area and there should be a description of how they will be provided. The approximate number of individuals to be served should be stated.

(c) Other Supportive Services

The application must describe any other supportive services to be provided wholly or partly by Title VI Part B funds. The approximate number of persons to be served by each service should be stated.

If legal assistance and ombudsman services are proposed, they must substantially comply with the requirements under Title III of the Older Americans Act for such services.

(2) *Data*

The application must identify the kinds of data to be collected and maintained.

(3) *Evaluation Criteria*

The application must discuss the criteria and methods to be used to evaluate the results of the project.

D. GEOGRAPHIC LOCATION

The area to be served by Title VI Part B must have clear geographic boundaries. The application must include a narrative description of the Title VI Part B service area, and a map.

E. ADDITIONAL INFORMATION

(1) *Older Native Hawaiians in the Title VI Part B Service Area*

The application must show the number of Native Hawaiians age 60 or over whom the applicant organization expects to serve, and also the total number of such older Native Hawaiians in the Title VI Part B service area.

(2) *Title VI Program Assurances*

"Title VI Program Assurances" must be included in the application. The Title VI Program Assurances are those provisions identified in Section 624(a) of the Older Americans Act, and Section 1328.19(d) of the Title VI regulations. The applicant organization must state that it agrees to abide by all those assurance provisions for the duration of the project.

(3) *Coordination with State Agency on Aging and Area Agency on Aging*

If the applicant is other than the State Agency on Aging or the Area Agency on Aging, the applicant must describe the specific manner in which the applicant organization coordinated with the State Agency on Aging and the Area Agency on Aging in planning and developing the application; and, if funds are received, the particular way in which the applicant organization will deliver service in close coordination with the services funded by the State and Area Agency on Aging under Title III of the Older Americans Act.

APPENDIX B—U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS GRANTEES OTHER THAN INDIVIDUALS

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the January 31, 1989 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the U.S. Department of Health and Human Services determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of the grant, or governmentwide suspension or debarment.

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) the dangers of drug abuse in the workplace;

(2) the grantee's policy of maintaining a drug-free workplace;

(3) any available drug counseling, rehabilitation, and employee assistance programs; and

(4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) abide by the terms of the statement; and

(2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) taking appropriate personnel action against such an employee, up to and including termination; or

(2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee shall insert in the space provided below, the site(s) for the performance of work done in connection with the specific grant (Street address, city, county, State, Zip Code):

_____

_____

_____

APPENDIX C—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery,

falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered actions.

[FR Doc. 89–15593 Filed 6–30–89; 8:45 am]

BILLING CODE 4130–01–M

Family Support Administration

Refugee Resettlement Program; Availability of Funding for Grants for FY 1989 Targeted Assistance for Services to Refugees [1] in Local Areas of High Need

AGENCY: Office of Refugee Resettlement (ORR), FSA, HHS.

ACTION: Final notice of availability of funding for grants for FY 1989 targeted assistance for services to refugees in local areas of high need.

SUMMARY: This notice announces the availability of funds and award procedures for FY 1989 targeted assistance project grants for services to refugees under the Refugee Resettlement Program (RRP). These grants are for service provision in localities with large refugee populations, high refugee concentrations, and high use of assistance, and where specific needs exist for supplementation of currently available resources.

A notice of proposed qualification of counties and allocation of funds was published for public comment in the Federal Register of January 25, 1989 (54 FR 3687).

As a result of the comments received, major changes have been made in this final notice. These changes are described in detail in the notice. In brief, (1) allocations are made on the basis of a combination of old and new formulas, rather than solely on the basis of a new formula, and (2) no county is phased out of the targeted assistance program under this notice. This approach permits a more gradual adjustment than was originally proposed. It takes into account the impact of refugee arrivals in the last few years while avoiding an abrupt termination of targeted assistance in any currently participating county.

Application Deadline: The deadline for applications from States for grants under this notice is August 14, 1989. Applications must be received on time.

An application will be considered to be received on time under either of the following two circumstances:

A. The application was sent via the U.S. Postal Service or by private commercial carrier not later than 45 days after publication of this final notice, unless it arrives too late to be considered by the reviewers. (Applicants are responsible for assuring that the U.S. Postal Service or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specifically instructed to do so.)

B. The application is hand-delivered on or before the closing date to the Office of Grants Management, FSA, 6th floor, 901 D Street, SW., Washington, DC 20447. Hand-delivered applications will be accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday (excluding Federal legal holidays) up through the closing date.

Late applications will be returned to the sending agency.

To be considered complete an application package must consist of a signed original and two copies of Standard Form 424, Parts I through IV.

Grant Regulations: Grants are subject to the administrative regulations published under title 45 of the Code of Federal Regulations, Part 74, §§ 74.62, 74.173, 74.174, 74.304, 74.710, and 74.715. Grants are subject to new HHS regulations on Grants Administration in 45 CFR Part 92. These regulations were published in the Federal Register of March 11, 1988, and became effective October 1, 1988. Part 92 is the HHS version of OMB Circular A–102 Common Rule.

For Further Information on Application and Grant Procedures, States Should Contact: Shirley Parker, Office of Grants Management, Family Support Administration, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone (202) 252–4618.

For Further Programmatic Information, States Should Contact: Ron Munia, Office of Refugee Resettlement, Family Support Administration, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone (202) 252–4559.

SUPPLEMENTARY INFORMATION:

The following major changes have bene made in this final notice as compared with the proposal published January 25:

1. The January 25 notice proposed that participation counties be phased out if they did not meet the original criteria for TAP participation when applied to more recent arrival data and that such phased-out counties be provided with a portion of the allocation they would have received under the existing formula based on the period between their present project-period end-dates and September 30, 1989.

This final notice does not require the phaseout of any country, does not use project-period end-dates in determining allocations, and does not base any allocations on a period ending September 30, 1989.

2. The January 25 notice proposed that allocations for counties which continued to meet the original criteria for TAP participation when applied to more recent arrival data be based entirely on such more recent arrival data, on States' dependency rates, and on their present project-period end-dates prorated through March 31, 1991.

This final notice bases all county allocations on a combination of old and new formulas, does not take present project-period end-dates into consideration, and does not prorate allocations based on a future end-date.

We believe that these modifications provide a needed adjustment in targeted assistance to take into account the impact of arrivals during 1983–1988 and at the same time provide a more gradual move away from allocations based on 1980–1982 arrivals than would have been accomplished under the January 25 proposal. If funds are appropriated for targeted assistance for FY 1990, ORR would expect to propose following this

[1] In addition to persons admitted to the United States as refugees, eligibility for targeted assistance includes Cuban and Haitian entrants, certain Amerasians from Vietnam who are admitted to the U.S. as immigrants, and certain Amerasians from Vietnam who are U.S. citizens. (See section III of this notice on "Authorization.") The term "refugee," used in this notice for convenience, is intended to encompass such additional persons who are eligible to participate in refugee program services, including the targeted assistance program.

same formula, updated to include 1989 arrivals.

3. The January 25 notice proposed to exclude certain types of general and remedial educational activities—such as preparation for a high school equivalency diploma or adult basic education—from being funded under the 85% of targeted assistance allocations that must be directed toward job placement since such educational activities often tend to be long term and not to be directed toward job placement within a reasonable period, thus not meeting the emphasis of refugee program legislation on early employment.

In this final notice, such activities are allowed if they are provided within the context of an individual employability plan for a refugee which is intended to result in job placement in less than one year.

I. Purpose and Scope

This notice announces the availability of funds for grants for targeted assistance for services to refugees in counties where, because of factors such as unusually large refugee populations, high refugee concentrations, and high use of public assistance, there exists and can be demonstrated a specific need for supplementation of resources for services to this population.

A total of $34,052,000 if FY 1989 funds is available for targeted assistance under the FY 1989 appropriations for the Department of Health and Human Services (Pub.L. 100–436).

The Conference Report on appropriations as follows with respect to the targeted assistance funds (H. Rept. 100–880, p. 28):

> The amount agreed to includes $10,531,000 for 12 months of additional special targeted assistance to Dade County schools and Jackson Memorial Hospital. For other targeted assistance grantees the conference agreement provides additional funding at the current rate of operations through fiscal year 1989.

Subsequent to the Conference Report, the amounts appropriated were reduced 1.2%.

Of the total funds available, the following amounts have been, or are expected to be, awarded for special targeted assistance project grants: $10,404,700 (the $10,531,000 referred to in the Conference Report minus the 1.2% reduction) for the Dade County Schools and Jackson Memorial Hospital; $400,000 for the Lowell, MA, school system which has received a recent influx of refugees and has demonstrated a specific need for supplementation of available resources for services; and $1,200,000 for Los Angeles County to address a sudden impact resulting from the arrival of several thousand Armenian refugees in FY 1988. The remaining targeted assistance funds $22,047,300, are allocated as set forth in this notice.

Except as specified in this notice, requirements regarding the use of the FY 1989 targeted assistance funds remain unchanged from those applied to FY 1988 targeted assistance funds as set forth in a notice to States of March 4, 1988.

The purpose of targeted assistance grants is to provide, through a process of local planning and implementation, direct services intended to result in the economic self-sufficiency and reduced welfare dependency of refugees through job placements.

The targeted assistance program reflects the requirements of section 412(c)(2)(B) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605), which provides that targeted assistance grants shall be made available "(i) primarily for the purpose of facilitating refugee employment and achievement of self-sufficiency, (ii) in a manner that does not supplant other refugee program funds and that assures that not less than 95 percent of the amount of the grant award is made available to the county or other local entity."

Services funded under the targeted assistance allocations are required to focus primarily on those refugees who, either because of their considerable and protracted use of public assistance or continued difficulty in securing employment, constitute a major resettlement problem for the affected jurisdiction which cannot be addressed without additional services. In order to ensure sufficient emphasis on services to appropriate clients, each State is required to assure that, for each qualified local area, cash assistance recipients (time-eligible and time-expired recipients under any program of the State or locality) will make up a percentage of the FY 1989 targeted assistance clientele which is not less than the State's final FY 1988 dependency rate.

Funds awarded under this program are intended to help fulfill the Congressional intent that "employable refugees should be placed on jobs as soon as possible after their arrival in the United States" (section 412(a)(1)(B) of the INA). Therefore at last 85% of targeted assistance funds are required to support projects which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs with less than one year's participation in the targeted assistance program. Innovative approaches to this objective, including strategies which address the employment potential of more than one wage earner in a household unit simultaneously are encouraged. General or remedial educational activities—such as adult basic education (ABE) or preparation for a high school equivalency or general education diploma (GED)—may be provided only within the context of an individual employability plan for a refugee which is intended to result in job placement within less than one year.

The degree of success of targeted assistance programs will be measured in terms on job placements, job retention, and reductions in cash assistance—the principal objectives of the authorizing legislation.

In order to meet extreme and unusual needs, up to 15% of a local area's allocation may be used for services which are not directed toward the achievement of a specific employment objective in less than one year but which are essential to the adjustment of refugees in the community, provided such needs are clearly demonstrated and such use is approved by the State, or by ORR in the case of State-administered local programs.

Cases in which a county plan contains proposed program activities not allowable under section VII, below, may be entertained by a State only where extreme and unusual need exists and is clearly demonstrated in the county's proposed plan. Such cases will be considered to involve a change in program scope or objectives and will therefore be subject to ORR prior approval.

A State may request a waiver in order to be able to allow a county to use more than 15% for non-employment-related services. ORR will approve such a request only in the most extreme circumstances of need.

The award of funds to States under this notice will be contingent upon the completeness of a State's application as described in section IX, below.

II. Discussion of Comments Received

One hundred twenty-five letters were received in response to the notice of proposed availability of funds for refugee targeted assistance. The comments are summarized below and are followed in each case by the Department's response.

Proposed Formula Allocation

Comment: Twenty-eight commenters expressed support for the proposed

allocation formula; 71 opposed it. Most, but not all, of the supportive comments came from areas which would have received higher allocations as a result of the change. A few comments in support of the proposed formula were also received from commenters in States whose targeted assistance counties were proposed to be phased out.

The 71 commenters who expressed opposition to the proposed formula cited the continuing needs of refugees and entrants in their areas and the impact that a reduction of targeted assistance resources would have on the provision of services. All of these comments were received from areas proposed to be phased out or to receive a lower level of funding.

Thirteen commenters specifically supported the formula which had been used to date and which was based on refugee and Cuban/Haitian entrant arrivals during FY 1980–1982.

Response: The Department's proposal of January 25 would have updated the existing targeted assistance formula to reflect more recent trends in refugee resettlement; data on arrivals in 1983–1988 would have been substituted for the 1980–1982 arrival data which had been used for all previous targeted assistance awards. One result of applying the new data to the existing formula would have been to phase out of the targeted assistance program more than half of the currently participating counties by the end of this fiscal year.

Our review of the comments has convinced us that, while it is important to update the targeted assistance allocations in order, to reflect more recent refugee arrival patterns, it is appropriate to apply the new data in a more gradual manner than we proposed. Therefore this final notice bases the allocations on the entire period of refugee and entrant arrivals from FY 1980 through FY 1988 and does not phase out any currently participating county. This has the effect of continuing to fund services in all targeted assistance sites, yet directing a greater percentage of funds to areas which have experienced increases in refugee arrivals over the past six years.

State Allocation Authority Among Targeted Assistance Counties

Comment: Twenty comments opposed continuing to allow a State which has more than one targeted assistance county the option of determining local county allocations within the State; all of these comments came from one county. One commenter from another State suggested that individual county allocations not be specified in the final notice since doing so would weaken the ability of the State to allocate funds differently if it deemed this necessary.

Response: The authority to allow States to allocate funds among counties was granted to the States in the FY 1986 program and has been continued since. The Department believes that States, as grantees charged with overall management of the program, should have the flexibility to respond to varying degrees of need among targeted assistance communities within a particular State.

The respective county allocations which the formula yields provide an objective basis for awarding funds. However, the specific impacts and relative needs for funds among the targeted assistance communities within a State may vary for a variety of local reasons which cannot reasonably be addressed in a formula-based allocation of funds across the country.

It should be noted that if a State should propose to allocate funds among its targeted assistance counties differently from the allocations contained in this announcement, such a proposal continues to be subject to ORR approval. Given this safeguard and, in our view, the lack of any compelling arguments against retaining this provision for State flexibility, we have decided to retain the provision in this announcement.

County Administrative Costs

Comment: One commenter asked whether any change was being proposed in the amounts allowable for local administrative costs of targeted assistance.

Response: No change was proposed in the amounts allowable for local targeted assistance administrative costs, previously set forth in the notice on FY 1986 targeted assistance in the Federal Register of August 27, 1986 (51 FR 30552). Allowable local targeted assistance administrative cost amounts range from 10% to 15% of the local allocation amount in inverse relationship to the size of the allocation.

Project-Period End-Dates

Comment: During the comment period, six States submitted end-dates different from those listed in the announcement and requested additional funds in instances where they were proposed to be phased out. Two commenters suggested that such dates not be used as it rewarded those that spent quickly and penalized those that managed their funds more effectively. Others complained that contract periods within the county were performance based and subject to modification due to performance and thus not reliably reflected in existing project-period end-dates.

Response: The use of the project-period end-dates listed in the January 25 proposal was intended to give counties adequate funds to phase out programs by the end of the fiscal year and to provide a basis for an equitable adjustment of allocations to counties proposed for continuation.

The comments led us to conclude that the project-period end-dates, which had been established by the States themselves, did not uniformly reflect the actual dates to which current funds were expected to enable projects to continue. Therefore we decided not to use such end-dates as an allocation factor in the formula set forth in this final notice.

Program Limitations

Comment: Twelve comments were received regarding the program service limitations. Some of the commenters supported keeping the focus of the program on employment of refugees and away from long-term training. Other commenters felt that long-term training should be allowed and that the targeted assistance guidelines were inconsistent with welfare reform programs which permit longer-term training. Objections were either to the one-year limit on length of training or to limitations on specific types of training which would have excluded general English language training, adult basic education, and preparation for a high school equivalency diploma.

Response: The proposed limitations were consistent with earlier announcements but were more specific in designating particular services as unallowable.

Targeted assistance guidelines have consistently reflected the emphasis of refugee program legislation on early employment and have prescribed time-limited service strategies intended to place refugees in jobs as quickly as possible. Earlier announcements required performance measures of job placements and job retention at six months for each service component.

A need for more flexibility in service strategies was recognized beginning with the FY 1984 targeted assistance program when the Department departed from strictly employment-related services and allowed 15% of the total funds awarded to be used to meet non-employment-related critical unmet needs. Use of the 15% funding for critical unmet needs continues to be allowed in county plans, subject to State approval and, in the case of State-administered programs, to ORR approval. In the event

that the State wishes to support a local area's request to allocate more than 15% of its funds for non-employment related services, the State must seek formal approval from ORR.

As a result of the comments received, the Department has reviewed the proposed wording with respect to the scope of services permissible for support within the 85% of funding which must be used for high-priority, employment-related services, and we have modified the announcement to allow certain basic educational training activities when they can be appropriately provided within the context of an individual employability plan for a refugee which is intended to result in job placement in less than one year.

We recognize that long-term education and training may be desirable for many refugees as they progress in building their lives in the United States, but we believe that such long-term activities are beyond the legislated intent, scope, and funding of the refugee program which provides transitional help aimed at job placement.

Updating of Dependency Rates

Comment: Some commenters recommended that the formula be updated by using cash assistance dependency rates as of September 30, 1988, rather than a year earlier as in the notice of January 25.

Response: As indicated in the January 25 notice, final figures were not then available for the dependency rates as of the end of FY 1988. The later figures are now available and are used in this final notice.

Basis and Effect of Proposed Allocation Formula

Comment: A few commenters considered the allocation formula flawed in that it did not contain data on secondary migrants into respective communities.

Response: Data on secondary migration at the county level are not collected and therefore are not available for use in formula allocations.

Comment: A number of commenters complained that the proposed allocation formula would penalize programs that had proved effective because the criteria for the continued participation of counties included high refugee cash assistance dependency levels and rates. Some suggested that the formula be modified by conducting, and taking into account the results of, individual community impact assessments or that rewards be provided for effective service strategies.

Response: We continue to feel that two of the best measures of impact are the number and proportion of refugees in a county who are dependent on publicly funded cash assistance. These are the criteria which, together with the number of refugee arrivals in a community and their proportion of the total population of the community, have been used throughout the targeted assistance program. In fact, targeted assistance providers are required to focus services on cash assistance recipients.

At the same time, we recognize that a formula based on the available data has limitations. However, resources are not available to conduct individual community assessments and it is questionable whether such assessments could provide an objective basis for providing gradations of limited funding among competing communities.

We believe that the revised and simplified formula established by this notice avoids some of the effects which commenters found objectionable in our January 25 proposal and at the same time recognizes impacts of refugee arrivals which have taken place since 1982.

Definition of Targeted Assistance Areas

Comment: Several commenters from two targeted assistance sites requested that the boundaries of their areas which were defined as targeted be redrawn so they could continue to qualify. Both of these areas were found to no longer qualify under the proposed formula.

Response: Since this final notice does not phase out any targeted assistance areas, we have not modified any of the boundaries.

Discretionary Awards

Comment: A few comments were received on the discretionary grant award for the Lowell, MA, school system. Most of these comments were from Los Angeles and pointed to the impact of the arrival of several thousand Armenian refugees in that county over the past year.

Response: ORR received an unsolicited grant application from Los Angeles County to help address the impact of the Armenian refugees and, as indicated in this notice, has awarded a discretionary grant of $1,200,000 for Los Angeles County.

Adequacy of Consultation

Comment: Several comments were received regarding a purported lack of consultation with the States regarding the proposed formula changes.

Response: The issuance of our proposed targeted assistance formula and allocations in January for public comment fulfilled the requirements of the Administrative Procedure Act and provided all interested public and private agencies, organizations, and individuals with the opportunity to make their views known to us. Before making those proposals, the Office of Refugee Resettlement in October 1988 held a national conference of State Refugee Coordinators, representatives of refugees mutual assistance associations (MAAs), representatives of voluntary refugee resettlement agencies, and other interested persons. At that conference, we stated the changes that would likely be proposed. During the ensuing discussion, several comments were made which emphasized the need for adequate phaseout time for those areas that would no longer qualify based on a proposed updated formula. These comments were taken into account in developing, and were reflected in, the proposal which was published in January.

III. Authorization

Targeted assistance projects are funded under the authority of section 412(c)(2) of the Immigration and Nationality Act (INA), as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605), 8 U.S.C. 1522(c); section 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422), 8 U.S.C. 1522 note, insofar as it incorporates by reference with respect to Cuban and Haitian entrants the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above; section 584(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100–202), insofar as it incorporates by reference with respect to certain Amerasians from Vietnam the authorities pertaining to assistance for refugees established by section 412(c)(2) of the INA, as cited above, including certain Amerasians from Vietnam who are U.S. citizens, as provided under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Pub. L. 100–461).

IV. Eligible Grantees

The following requirements, which have previously applied to TAP, continue to apply with respect to FY 1989 awards:

Eligible grantees are those agencies of State governments which are responsible for the refugee program under 45 CFR 400.5 in States containing counties which qualify for FY 1989 targeted assistance awards. The use of

targeted assistance funds for services to Cuban and Haitian entrants is limited to States which have an approved State plan under the Cuban/Haitian Entrant Program (CHEP).

The State agency will submit a single application on behalf of all county governments of the qualified counties in that State. Subsequent to the approval of the State's application by ORR, local targeted assistance plans will be developed by the county government or other designated entity and submitted to the State.

A State with more than one qualified county is permitted, but not required, to determine the allocation amount for each qualified county within the State.

Applications submitted in response to this notice are not subject to review by State and areawide clearinghouses under Executive Order 12372, "Intergovernmental Review of Federal Programs."

V. Qualification and Allocation Formula

The Director of ORR has decided to apply a new basis for the FY 1989 TAP to determine the allocation of funds.

Formula Used to Date

The Department has used a two-stage formula for qualification for, and allocation of, TAP funds since the inception of the refugee targeted assistance program in FY 1983. The first stage of the formula defines the qualification of counties for TAP through the use of four equally-weighted criteria which were selected to collectively indicate local conditions and problems which the program was intended to address.

In order to qualify for TAP funds, a county (or group of adjacent counties within the same Standard Metropolitan Statistical Area, or SMSA) was required to be above the median or above a specified cutoff point of jurisdictions for which data were reviewed in three of the four following criteria: (1) The number of refugees placed in the county during FY 1980–1982; (2) the ratio of the overall county population to the refugees in item (1), above; (3) the number of refugees in the county who were receiving cash assistance under the programs of aid to families with dependent children (AFDC) and refugee cash assistance (RCA) on October 1, 1982; and (4) the ratio of refugees in item (3) to the number of refugees in item (1). A county which placed above the cutoff point in any three of the above categories was determined to be qualified to apply for targeted assistance funds and was included in the list of qualifying localities for determination of its targeted assistance allocation.

The median for Criterion 1, above, was 2,066.5. The median for Criterion 2 was 244.5. The cutoff point for Criterion 3 was 1,000. The cutoff point for Criterion 4 was established at 50%, the approximate national average dependency rate. Counties which met three of the four criteria qualified for the program.

The second stage of the formula consisted of the number of refugees in a qualified county who had been in the U.S. 36 months or less and who were receiving AFDC or RCA on October 1, 1982. Some adjustments were made for State-to-State differences in assistance programs. These adjusted figures on the use of assistance then comprised the formula base for the allocation of funds. (A more detailed description of this formula was pubished in the **Federal Register** of June 3, 1983, 48 FR 24986.)

Targeted assistance related to the needs of Cuban and Haitian entrants was based on county populations of entrants who also arrived during FY 1980–1982. (See the **Federal Register** of July 27, 1983, 48 FR 34127.)

The results of these formulas provided the basis for the allocation of TAP funds during each fiscal year in which such funds were appropriated—FY 1983, 1984, 1985, 1986, and 1988.

Revised Formula

More than 9 years have passed since the first—and more than 6 years since the last—of the arrivals during FY 1980–1982 (October 1, 1979–September 30, 1982) on which TAP has been based to date. More than $270,000,000 in TAP funds have been provided to address the needs of those refugees and entrants.

The Director has determined that is is no longer appropriate to make TAP funds available solely on the basis of the needs of refugees and entrants who arrived during the period October 1, 1979–September 30, 1982.

Therefore the Director has decided to base part of the allocation of funds among currently participating counties on refugee and entrant placements in these counties during calendar year (CY) 1983–FY 1988 and on cash assistance dependency rates as of September 30, 1988 (ORR's latest dependency-rate data).

In determining whether additional counties would be eligible to participate in the targeted assistance program, the Director applied the same four criteria used previously, including the same cutoff points, to the updated information on refugee arrivals, concentrations, dependency rates, and receipt of cash assistance. As before, a county would have to meet three out of the four criteria in order to qualify.

The results of these determinations are as follows:

1. *Counties not currently participating in TAP:* No county not currently participating in TAP was found to meet at least three out of the four criteria.

2. *Counties currently participating in TAP:* The allocations among the counties currently participating in TAP are based on a combination of two formulas related to different periods of refugee arrivals. Of the $22,047,300 which is allocated by formula:

a. $12,566,961, or 57%, is allocated on the basis of the formula which has been used for all previous targeted assistance allocations ("old formula") and which is based on initial placements during FY 1980–1982 and other factors as described above under "Formula Used to Date."

b. $9,480,339, or 43%, is allocated on the basis of arrivals during CY 1983–FY 1988 ("new formula").

The above percentages are based on the proportion of initial placements in these counties during the two periods: 340,737, or 57%, during the old-formula period; and 253,552, or 43% during the new-formula period.

The old-formula allocation of $12,566,961 follows the same distribution among counties as in the past.

The new-formula allocation of $9,480,339 is based on the number of initial placements in each county during CY 1983–FY 1988 multiplied by the State's time-eligible** dependency rate as of September 30, 1988. The weighted index resulting from this calculation was used to determine each county's share of the new-formula funds. We believe that, in the absence of additional data, each county's proportionate share of the number of initial placements and the State's time-eligible dependency rate provide good indicators of relative need.***

VI. Allocations

Table 1 lists the participating counties, the amount of each county's allocation which is based on the old

** The term "time-eligible" means refugees in their first 24 months in the U.S., the time-period for which States could claim cash and medical assistance costs against ORR's grants to the States as of the end of FY 1988. "Time-expired" refers to refugees who have been in the U.S. more than 24 months.

*** More specific data might include the estimated county populations of refugees who arrived during CY 1983–FY 1988 and actual numbers of time-expired refugees who are receiving cash assistance. However, it is not possible to estimate county refugee populations reliably because of lack of county-level information on secondary migration. Data are not universally available on the receipt of cash assistance by time-exported refugees.

formula, the number of placements in each county during CY 1983–FY 1988, the State's dependency rate as of September 30, 1988, the amount of each county's allocation which is based on the new formula, and the county's total allocation.

Although Table 1 shows an amount for each county, the Director has decided, in the case of a State which contains more than one qualified county, to continue to permit the State to determine (in accordance with the requirements set forth in this notice) the appropriate allocation of the State's targeted assistance award among the qualified counties in the State. The Director sees this as continuing ORR's practice of providing as much authority and flexibility as possible to States in determining the relative needs of the qualified counties within a State. Thus each such State, as in the FY 1988 TAP, is responsible for determining an appropriate and equitable basis for allocating the funds among the qualified counties in the State and for including in its application for approval by ORR a description of this allocation basis, the data to be used, and the allocation proposed for each county.

Table 2 provides State totals for the county allocations set forth in Table 1.

TABLE 1.—TARGETED ASSISTANCE ALLOCATIONS BY COUNTY: FY 1989

County	State	Arrivals Jan 1983–Sept. 1988 (A)	Percent Receiving Assistance (B)	Portion of FY 1989 allocation under old formula (C)	Portion of FY 1989 allocation under new formula (D)	Total FY 1989 allocation (E)
Alameda	CA	7,812	78.9	$310,036	$404,593	$714,629
Contra Costa	CA	2,033	78.9	88,646	105,292	193,938
Fresno	CA	4,846	78.9	171,202	250,980	422,182
Los Angeles	CA	50,397	78.9	1,565,641	2,610,120	5,375,761[2]
Merced	CA	1,813	78.9	208,966	93,897	302,863
Orange	CA	15,959	78.9	696,660	826,536	1,523,196
Riverside/San Bernardino	CA	2,512	78.9	88,439	130,100	218,539
Sacramento	CA	4,105	78.9	265,361	212,603	477,964
San Diego	CA	10,163	78.9	519,241	526,354	1,045,595
San Francisco	CA	9,590	78.9	402,952	496,677	899,629
San Joaquin	CA	4,618	78.9	267,765	239,172	506,937
Santa Clara	CA	13,095	78.9	518,620	678,206	1,196,826
Stanislaus	CA	1,800	78.9	48,447	93,224	141,671
Denver	CO	2,905	39.0	104,592	74,368	178,960
Broward	FL	510	29.9	173,250	10,010	183,260
Dade	FL	17,027	29.9	3,022,463	334,186	13,761,349[3]
Hillsborough	FL	1,034	29.9	54,446	20,294	74,740
Palm Beach	FL	301	29.9	71,972	5,908	77,880
Honolulu	HI	1,681	76.8	115,172	84,744	199,916
Cook/Kane	IL	12,654	23.3	541,012	193,537	734,549
Sedgwick	KS	1,854	29.2	128,921	35,536	164,457
Orleans	LA	2,293	10.5	88,072	15,804	103,876
Montgomery/Prince Georges	MD	3,179	11.1	107,144	23,163	130,307
Middlesex	MA	2,803	45.2	84,641	83,165	567,806[4]
Suffolk	MA	7,440	45.2	194,257	220,745	415,002
Hennepin	MN	3,933	69.1	136,475	178,394	314,869
Ramsey	MN	4,369	69.1	191,892	198,171	390,063
Jackson	MO	1,226	14.2	50,101	11,428	61,529
Essex	NJ	2,039	22.6	28,994	30,248	59,242
Hudson	NJ	900	22.6	194,011	13,351	207,362
Union	NJ	322	22.6	38,947	4,777	43,724
New York	NY	15,359	23.9	432,873	240,957	673,830
Multnomah	OR	4,868	50.1	294,102	160,091	454,193
Philadelphia	PA	6,293	33.6	201,314	138,796	340,110
Providence	RI	2,526	39.4	143,788	65,329	209,117
Harris	TX	9,075	21.1	235,975	125,692	361,667
Salt Lake	UT	3,674	19.9	71,736	47,992	119,728
Arlington	VA	1,510	24.4	124,314	24,185	148,499
Fairfax	VA	3,575	24.4	149,898	57,259	207,157
King/Snohomish	WA	9,348	55.1	358,095	338,103	696,198
Pierce	WA	2,111	55.1	76,528	76,352	152,880
Total		253,552	52.1	$12,566,961	$9,480,339	$34,052,000

[1] Column (E) includes discretionary awards as indicated.
[2] Includes $1,200,000 discretionary award.
[3] The allocation for Dade County, Florida, includes $10,404,700 for Jackson Memorial Hospital (Miami) and the Dade County (Miami) public schools. This is the amount specified in the Conference Report on the FY 1989 HHS appropriation (Pub. L. 100–436) less the 1.2% reduction in the final appropriation ($10,531,000 minus 1.2%). The amounts are $5,675,300 for Jackson Memorial and $4,729,400 for the Dade County schools.
[4] Includes $400,000 discretionary award for Lowell school system.

TABLE 2.—TARGETED ASSISTANCE ALLOCATIONS BY STATE: FY 1989

State	FY 1989 allocation by state[1]
California	$13,019,730
Colorado	178,960
Florida	14,097,229
Hawaii	199,916
Illinois	734,549
Kansas	164,457
Louisiana	103,876
Maryland	130,307
Massachusetts	982,808
Minnesota	704,932
Missouri	61,529
New Jersey	310,328
New York	673,830
Oregon	454,193
Pennsylvania	340,110
Rhode Island	209,117
Texas	361,667
Utah	119,728
Virginia	355,656
Washington	849,078
Total	$34,052,000

[1] State totals include discretionary awards specified in footnotes to Table 1.

VII. Allowable Activities and Client Prioritization

At least 85% of a county's FY 1989 targeted assistance funds must be used to support activities permissible under section 412(c) of the INA which have specific employment objectives and are directly related to aiding refugees in finding and retaining jobs within less than one year's participation in the targeted assistance program. Examples of these activities are: Job development; job placement; job-related and vocational English; short-term job training specifically related to opportunities in the local economy; on-the-job training; business and employer incentives (such as on-site employee orientation, vocational English training, or bilingual supervisor assistance); and business technical assistance. These funds may be used for general or remedial educational services—such as adult basic education (ABE) or preparation for a high school equivalency or general education diploma (GED)—only if such service is provided within the context of an individual employability plan for a refugee which is intended to result in job placement within less than one year.

Strategies which address the employment potential of more than one wage earner in a household unit simultaneously are encouraged.

Up to 15% of a local area's allocation may be used for other services which are permissible under section 412(c) of the INA and which are identified and demonstrated in the county plan to be essential services in addressing extreme and unusual needs of the refugee population in the targeted assistance area even though they do not have specific objectives of job placement within less than one year. Subject to State review and approval, a maximum of 15% of the allocation amount for each area may be used in funding these services.

In the event that a State might wish to grant a local area's request to allocate more than 15% of its funds for such non-employment-related services, the State is required to obtain formal prior approval by the Director of ORR. Only the most extreme needs will be considered adequate justification for a local area to use more than 15% of its TAP funds for these services. In order to justify the provision of services for extreme and unusual needs, a county plan must identify the target population, demonstrate clearly the nature and extent of the needs, and describe how the use of more than 15% of its targeted assistance funds to address such needs would contribute to the adjustment of the refugee population.

Services funded under TAP are required to focus primarily on those refugees who, either because of their considerable and protracted use of public assistance or continued difficulty in securing employment, constitute a major resettlement problem for the affected jurisdiction which cannot be addressed without additional services. In order to ensure sufficient emphasis on services to appropriate clients, each State is required to provide an assurance in its application to ORR that, for each qualified local area, cash assistance recipients (time-eligible and time-expired recipients under any program of the State or locality) will make up a percentage of the FY 1989 targeted assistance clientele which is not less than the State's final FY 1988 dependency rate as determined by ORR.

This client prioritization requirement does not apply to the 15% funds described above.

VIII. Application and Implementation Process

Under the FY 1989 targeted assistance program, as in FY 1988, States may apply for and receive grant awards on behalf of qualified counties in the State. A single allocation will be made to each State by ORR on the basis of an approved State application. The State agency will, in turn, receive, review, and determine the acceptability of individual county targeted assistance plans.

Although funding for educational services in Dade County, FL, and Lowell, MA, for medical services at Jackson Memorial Hospital, and to address special impacts in Los Angeles County is part of the appropriation amount for targeted assistance, the scope of activities for these special projects will be administratively determined. Applications for those funds are therefore not subject to provisions contained in this notice to other requirements which have been conveyed separately.

IX. Application Requirements

The State application requirements for grants for the FY 1989 targeted assistance program are as follows:

States that are currently operating under approved management plans for their FY 1988 targeted assistance program and wish to continue to do so for their FY 1989 grants may provide the following in lieu of resubmitting the full currently approved plan:

The State's application shall provide:

A. Assurance that the State's current management plan for the administration of the targeted assistance program, as approved by ORR, will continue to be in full force and effect for the FY 1989 targeted assistance program, subject to any additional assurance or revisions required by this notice which are not reflected in the current plan. Any proposed modifications to the approved plan will be described separately in the application and are subject to ORR review and approval.

B. Timetables for awarding funds to the local areas consistent with the conclusion of services under the FY 1988 program as modified by carry-forward requests or no-cost extensions of FY 1984–1988 targeted assistance funds. Service period can be for up to 18 months but must conclude by no later than March 31, 1991.

C. A line item budget and justification for State administrative costs limited to a maximum of 5% of the total award to the State.

D. Revised information and description of any proposed plan modifications. Any proposed changes must address and reference all appropriate portions of the FY 1988 application content requirements to ensure complete incorporation in the State's management plan.

E. *This paragraph applies only to States administering the program locally:* States that have administered the program locally or provide direct service to the refuge population (with the concurrence of the county) must submit a program summary to ORR for prior review and approval. The summary must include a description of the proposed services; a justification for the projected allocation for each

component including relationship of funds allocated to numbers of clients served, characteristics of clients, duration of training and services, projected outcomes, and cost per placement. In addition, the program component summary should describe any ancillary services or subcomponents such as day care, transportation, or language training.

F. *This paragraph applies only to States with two or more counties receiving targeted assistance funds:* As in FY 1988, a State with two or more local areas which qualify for the program may choose to determine respective county allocations. If the State chooses to determine county allocations differently from those set forth in Table 1 of this notice, the State should provide a description of the State's proposed allocation plan. The allocation approach should be based upon existing FY 1988 funds, FY 1984–1986 funds carried forward, and indicators of refugee need for targeted assistance services. The application should contain a description of the allocation approach, data used in its determination, and the calculated allocation amount for each county. States are encouraged to revise allocation formulas to assure appropriate funding among eligible counties for the duration of the grant such that targeted assistance activities within the State conclude simultaneously. The allocation formula is subject to ORR approval. If the State chooses not to determine county allocation amounts, the State must provide the allocations which are specified in this notice.

G. Assurance that, for each qualified local area, cash assistance recipients (time-eligible or time-expired recipients under any program of the State or locality) will make up a percentage of the FY 1989 targeted assistance clientele no less than the State's final FY 1988 dependency rate, as determined by ORR, unless a waiver of this requirement is granted by ORR.

X. Review, Technical Assistance, and Award Procedure

Applications will be reviewed on a non-competitive basis to determine acceptability. Such determination will be based on the completeness of the submission, satisfactory progress by the grantee, the receipt of required program and financial reports, and ORR's determination that continued funding is in the best interest of the Government. The Department will provide technical assistance to the applicant if it is necessary in order to develop a proposal which warrants the award of funds at the proposed allocation amount and if such assistance is requested by the applying State agency. Final determination as to the acceptability of applications is at the discretion of the Director of ORR.

XI. Reporting Requirements

FY 1989 TAP grants must be tracked separately from previous TAP grants, both financially and programmatically. For the FY 1989 program, States are required to submit semiannual reports and one final report as in previous years on the services provided in each targeted area. States are required to report on the number of job placements and retentions, cash assistance recipients placed on jobs, costs per placement, and other items specified in the "Reporting Requirements for Targeted Assistance Grants for Services for Refugees in Local Areas of High Need," OMB No. 0970–0042, expiration date February 28, 1991. Semiannual reports covering activity through September 30 and March 31 of each year are due on November 30 and May 31 of each year. A final cumulative report is due 120 days after the end of the full grant period.

Dated: June 20, 1989.

Philip A. Holman,

Acting Director, Office of Refugee Resettlement.

Approved: June 22, 1989.

Catherine Bertini,

Acting Assistant Secretary for Family Support.

[FR Doc. 89–15321 Filed 6–28–89; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committee.

Meeting: The following advisory committee meeting is announced:

Peripheral and Central Nervous System

Date, time, and place. July 7, 1989, 8:30 a.m., Conference Rm. J, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; closed committee deliberations, 9:30 a.m. to conclusion; Gretchen Hascall, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of neurological disease.

Agenda—Open public meeting. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person as soon as possible.

Closed committee deliberations. The committee will hear trade secret and/or confidential commercial information relevant to an investigational new drug (IND) application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

FDA is giving less than 15 days public notice of this Peripheral and Central Nervous System Drugs Advisory Committee meeting because it involves an expedited review of a human drug intended for use in a serious illness where there is no alternative therapy. There is no regularly scheduled meeting in the near future, and the agency decided that it was in the public interest to hold this scientific review on July 7, 1989, even if there was not sufficient time for the customary 15-day public notice.

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public meeting portion of each meeting shall be at least 1 hour unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson

determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcripts may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA Advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files complied for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would continue a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency or matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: June 28, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89–15673 Filed 6–30–89; 3:01 pm]

BILLING CODE 4160–01–M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 46, No. 223, pg. 56929 dated Thursday, November 19, 1981), is amended to reflect a reorganization of the Regulations Staff, Bureau of Policy Development, Office of the Associate Administrator for Program Development.

The specific amendments to Part F. are described below.

- Section FQ.20.A.3., Regulations Staff (FQA–3), is deleted in its entirety and replaced by a revised functional statement.

3. Regulations Staff (FQA–3).

Drafts all HCFA regulations and related clearance documents and HCFA rulings. Establishes and assures compliance with editorial standards for clarity and uniformity of HCFA regulations and with the requirements of the Office of the **Federal Register**. Recommends schedules for the development of regulations, tracks progress against these schedules, and develops routine and special reports on HCFA's regulatory activities. Chairs regulations development teams and negotiates the resolution of policy issues necessary to meet regulations schedules. Obtains clearances of draft regulations from initiating Bureaus. Coordinates BPD's review of regulations received for concurrence from other HCFA components and prepares BPD's response. Reviews draft regulations and completes needed studies to assure compliance with the requirements for regulatory impact analysis of Executive Order 12612, the Regulatory Flexibility Act, and small rural hospital impact. Maintains specialized word processing systems to assure efficient preparation of regulations documents. Maintains official agency regulations files. Maintains current compilation of 42 Code of Federal Regulations, Part 400-

End. Develops preprinted Medicaid State plan material to reflect published regulations. Conducts training on HCFA regulations policies and processes.

Robert A. Streimer,

Acting Associate Administrator for Management.

Date: June 22, 1989.

[FR Doc. 89-15594 Filed 6-30-89; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Draft Environmental Assessment— Proposed Little Pecan Island National Wildlife Refuge, Cameron Parish, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Draft Environmental Assessment for the proposed Little Pecan Island National Wildlife Refuge.

SUMMARY: This Notice advises the public that the Draft Environmental Assessment for the proposed Little Pecan Island National Wildlife Refuge is available for public review, effective June 26, 1989. The U.S. Fish and Wildlife Service (Service) proposes to protect and enhance approximately 10,000 acres of coastal wetlands in Cameron Parish, Louisiana. The environmental assessment evaluates the value and significance of the resources of the area in regard to potential acquisition by the Service as an addition to the National Wildlife Refuge System and to analyze other alternative uses of the area.

DATES: The assessment is presently available to the public as of July 3, 1989. Written comments must be received no later than August 2, 1989, to be considered.

ADDRESSES: Comments and requests for copies of the assessment should be addressed to: Mr. Charles R. Danner, Chief, Project Development Branch, Office of Refuges and Wildlife, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Room 1240, Atlanta, GA 30303.

SUPPLEMENTARY INFORMATION: The primary objective for which the area would be managed is the preservation of wintering habitat for migratory waterfowl to help achieve the goals established by the North American Waterfowl Management Plan. Marshes within the acquisition area are heavily used by wintering ducks such as gadwall, mottled duck, green-winged teal, blue-winged teal, mallard, shoveler, widgeon, and pintail. Secondary uses compatible with the primary objective could include public recreational opportunities such as hunting, fishing, and wildlife photography; environmental research and related educational activities may also be compatible with the refuge objectives. The project area has existing impoundments and water control structures that would allow rapid implementation of a wildlife management plan for the new refuge.

The proposed refuge is located in eastern Cameron Parish, approximately 20 miles southwest of Lake Arthur, Louisiana. Lacassine National Wildlife Refuge lies approximately 12 miles to the northwest and Rockefeller Wildlife Refuge and Game Preserve (State) is five miles south. The area is accessible only by boat or small aircraft.

Service biologists have prepared a draft environmental assessment (EA) in coordination with the State of Louisiana, other federal agencies and private groups which documents the impacts of the Service acquiring the land and establishing the refuge. Two other management alternatives and their subsequent impacts are also evaluated in the draft EA. The preferred alternative, *i.e.*, Service acquisition and management, would be a positive action in preventing the loss or deterioration of valuable wetland resources of this Nation.

June 13, 1989.

W.T. Olds, Jr.,

Acting Regional Director.

[FR Doc. 89-15638 Filed 6-30-89; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[AA-150-09-4830-11-ADVB-2410]

Call for District Advisory Council Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations for district advisory councils.

SUMMARY: The purpose of this notice is to solicit public nominations to fill those positions for which terms expire this year on each of the Bureau of Land Management's 52 district advisory councils. Each council has three such positions to be filled, except the California Desert District Advisory Council and the Susanville District Advisory Council, which have five and four such positions to be filled, respectively.

Each affected council comprises 10 members, except the California Desert District Advisory Council and the Northern Alaska Advisory Council, which comprise 15 and 11 members, respectively. Under the established staggered-term arrangement, the terms of five members on the California Desert District Advisory Council, the terms of four members on the Susanville District Advisory Council, and the terms of three members on each of the remaining 50 councils will expire on December 31, 1989. Current council members may be reappointed or new members may be appointed. However, the eligibility of current council members for reappointment may be affected by governing regulations (43 CFR 1784.3(b)). Appointments made by the Secretary pursuant to this call will assure continued representation of specific categories of interest on each council. The new terms will expire December 31, 1992.

To ensure council membership that is balanced in terms of categories of interest represented and functions performed, nominees must be qualified to provide advice in specific areas identified with each council position now up for appointment. Categories for specific councils will be announced through local news releases in the appropriate States and Districts and will include the following:

Elected General Purpose Government
Environmental Protection
Recreation
Renewable Resources (livestock, forestry, agriculture)
Non-Renewable Resources (mining, oil and gas, extractive industries)
Transportation/Rights-of-Way (or occupancy issues)
Wildlife
Public-at-Large.

The purpose of the councils is to provide informed advice to the respective District Managers on the management of the public lands. Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

Each council normally will meet at least twice annually. Additional meetings may be called by the District Manager or his designee in connection with special needs for advice.

Persons wishing to nominate individuals or to be nominated to serve on an advisory council should contact the appropriate District Manager of the Bureau of Land Management at the corresponding District Office address below to ascertain which categories of interest are to be represented. They should then provide the District Manager with the names, addresses,

professions, and other biographic data of qualified nominees.

DATE: All nominations should be received by July 31, 1989.

ADDRESSES: The Districts and their mailing addresses are as follows:

Alaska

Arctic, Kobuk, and Steese-White Mountain (jointly served by the Northern Alaska Advisory Council): c/o Public Affairs Staff, Fairbanks Support Center, 1150 University Ave., Fairbanks, AK 99709–3844
Anchorage and Glennallen (jointly served by the Southern Alaska Advisory Council): c/o Public Affairs Staff, Alaska State Office, 222 W. 7th Ave., Anchorage, AK 99513–7599

Arizona

Arizona Strip: 390 N., 3050 E., St. George, UT 84770
Phoenix: 2015 W. Deer Valley Rd., Phoenix, AZ 85027
Safford: 425 E. 4th St., Safford, AZ 85546
Yuma: 3150 Winsor Ave., Yuma, AZ 85365

California

Bakersfield: 800 Truxtun Ave., Bakersfield, CA 93301–4782
California Desert: 1695 Spruce St., Riverside, CA 92507–2497
Susanville: 705 Hall St., Susanville, CA 96130–3730
Ukiah: 555 Leslie St., Ukiah, CA 95482–5599

Colorado

Canon City: Box 311, Canon City, CO 81212
Craig: 455 Emerson St., Craig, CO 81625
Grand Junction: 764 Horizon Dr., Grand Junction, CO 81506
Montrose: 2465 S. Townsend Ave., Montrose, CO 81401

Idaho

Boise: 3948 Development Ave., Boise, ID 83705
Burley: Route 3, Box 1, Burley, ID 83318
Coeur d'Alene: 1808 N. 3rd St., Coeur d'Alene, ID 83814
Idaho Falls: 940 Lincoln Rd., Idaho Falls, ID 83401
Salmon: Box 430, Salmon, ID 83467
Shoshone: Box 2B, Shoshone, ID 83352

Montana

Butte: Box 3388, Butte, MT 59702
Lewistown: 80 Airport Rd., Lewistown, MT 59457
Miles City: Box 940, Miles City, MT 59301

Nevada

Battle Mountain: Box 1420, Battle Mountain, NV 89820
Carson City: 1535 Hot Springs Rd., Carson City, NV 89701
Elko: Box 831, Elko, NV 89801
Ely: Star Route 5, Box 1, Ely, NV 89301
Las Vegas: Box 26569, Las Vegas, NV 89126
Winnemucca: 705 E. 4th St., Winnemucca, NV 89445

New Mexico

Albuquerque: 435 Montano Rd., NE., Albuquerque, NM 87107
Las Cruces: 1800 Marquess St., Las Cruces, NM 88005
Roswell: Box 1397, Roswell, NM 88201–1397

North Dakota

Dickinson: 2933 3rd Ave. W., Dickinson, ND 58601

Oregon

Burns: HC 74–12533 Highway 20 West, Burns, OR 97738
Coos Bay: 333 S. 4th St., Coos Bay, OR 97420
Eugene: Box 10226, Eugene, OR 97401
Lakeview: Box 151, Lakeview, OR 97630
Medford: 3040 Biddle Rd., Medford, OR 97504
Prineville: Box 550, Prineville, OR 97754
Roseburg: 777 N.W. Garden Valley Blvd., Roseburg, OR 97470
Salem: 1717 Fabry Rd., SE., Salem, OR 97306
Vale: Box 700, Vale, OR 97918

Utah

Cedar City: Box 724, Cedar City, UT 84720
Moab: Box 970, Moab, UT 84532
Richfield: 150 E. 900 N., Richfield, UT 84701
Salt Lake: 2370 S. 2300 W., Salt Lake City, UT 84119
Vernal: 170 S. 500 E., Vernal, UT 84078

Washington

Spokane: E. 4217 Main, Spokane, WA 99202

Wyoming

Casper: 1701 East "E" Street, Casper, WY 82601
Rawlins: Box 670, Rawlins, WY 82301
Rock Springs: Box 1869, Rock Springs, WY 82902–1869
Worland: Box 119, Worland, WY 82401.

FOR FURTHER INFORMATION CONTACT: The appropriate District Managers.

Tom Allen,

Acting Deputy Director.

June 19, 1989.

[FR Doc. 89–15217 Filed 6–30–89; 8:45 am]

BILLING CODE 4310–84–M

[Charge Code: (OR120–6310–02: GP9–253]

Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of Coos Bay District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR, Part 1780 that a meeting of the Coos Bay District Advisory Council will be held on Tuesday, August 8, 1989, beginning at 9:00 a.m. The meeting will be held in the BLM Coos Bay District Office conference room.

(Note: this will be in the new Coos Bay District office facility at 1300 Airport Lane, North Bend, OR).

Agenda: The agenda for the meeting will include:

1. Election of officers.
2. Updates on certain local issues including; The New River Area of Critical Environmental Concern, Coos Bay's North Spit, the new District office facility, the Dean Creek Elk Viewing Area and the current state of BLM's Resource Management Plan.
3. A discussion of recent court and agency actions related to the Northern spotted owl, and their effects on BLM timber management and log supply.
4. Plans for the next meeting.

The meeting is open to the public and news media. Interested persons may make oral statements to the council between 10:00 a.m. and 10:30 a.m. on Tuesday, August 8, or file written statements for the council's consideration. Anyone wishing to make an oral statement must notify the District Manager by close of business on Tuesday, August 1, 1988, (Telephone 503–269–5880).

ADDRESS: Bureau of Land Management, Coos Bay District Office, 1300 Airport Lane, North Bend, OR 97459.

Minutes of the meeting will be maintained at the District Office and made available during regular business hours (7:45 a.m. to 4:30 p.m.) for public inspection or reproduction at the cost of duplication.

Date: June 23, 1989.

Albert Abee,

Umpqua Resource Area Manager.

[FR Doc. 89–15620 Filed 6–30–89; 8:45 am]

BILLING CODE 4310–33–M

[NV-930-09-4212-14; N-45234]

Realty Action; Proposed Noncompetitive Sale; Mineral County, Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action on proposed sale.

SUMMARY: The following described land comprising 8.21 acres has been examined and identified as suitable for sale under sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713) and (90 Stat. 2757; 43 U.S.C. 1719), at no less than fair market value:

Mount Diablo Meridian

T. 8 N., R. 30 E.,
Sec. 26, Lot 1.

The parcel of land will be offered by a direct sale to the Board of Mineral County Commissioners. The land has been identified for transfer to Mineral County. The proposed sale is consistent with Bureau and local government planning. The land is not needed in support of any federal program.

Patent, when issued, will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States; Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

Since the land has no known mineral value, the mineral estate can be conveyed simultaneously with the surface estate in accordance with section 209(b)(1) of Pub. L. 94-579. Acceptance of a direct sale offer will constitute an application for conveyance of the mineral interests. The Board of Mineral County Commissioners will be required to submit a $50 nonreturnable fee with the purchase price for conveyance of the mineral interests specified above.

The patent will also be subject to:

1. Those rights for highway purposes which have been granted to the State of Nevada Department of Highways, its successors or assignees, by the U.S. Department of the Navy, by Grant of Easement Nev-046896 under the authority of the Act of Congress of October 25, 1951.

2. Those rights for highway purposes which have been granted to the Nevada Department of Transportation, its successors or assignees, by Highway Easement Deed dated October 27, 1983, recorded in Book 95, Pages 19-28, Document No. 065576 of the Mineral County Recorder's Office (N-38203).

3. An easement for powerline purposes granted to Sierra Pacific Power Company by the Department of the Navy, being 20 feet in width on each side of the centerline, recorded in the records of Mineral County as File No. 18871 of Book 37, Pages 330-334 (N-11404).

Detailed information concerning the sale is available for review at the Carson City District Office.

Upon publication of this notice in the Federal Register, the land described above will be segregated from all forms of nondiscretionary appropriation under the public land laws, including location under the general mining laws. The segregative effect of this notice of realty action shall terminate upon issuance of patent or other document of conveyance to such land, upon publication in the Federal Register of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

The land will be offered no earlier than 60 days after the date of this notice. For a period of 45 days after the date of this notice, interested parties may submit comments to the Bureau of Land Management, Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706. Any adverse comments will be evaluated by the District Manager. The Nevada State Director, Bureau of Land Management, may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Failure to purchase the land within the time specified by the Authorized Officer shall constitute a waiver of the preference consideration. If the preference consideration is waived by Mineral County, the land will be offered for sale through competitive bidding at a later date.

James W. Elliott,

District Manager.

Date: June 23, 1989.

[FR Doc. 89-15621 Filed 6-30-89; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 24, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by July 18, 1989.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Limestone County

Houston, George S., Historic District, Roughly 2nd Ave., Jefferson St., McClellan St., Marion St., Hobbs St., Madison St., Washington St., and Houston St., Athens, 89000943

CALIFORNIA

Sonoma County

Guerneville Bridge, Rt. 116 over Russian River, Guerneville, 89000945

Ventura County

Ebell Club of Santa Paula, 125 S. Seventh St., Santa Paula, 89000949

CONNECTICUT

Fairfield County

Davenport, Hanford, House, 353 Oenoke Ridge, New Canaan, 89000948

FLORIDA

Hillsborough County

Bay Isle Commercial Building (Mediterranean Revival Style Buildings of Davis Island MPS), 238 E. Davis Blvd., Tampa, 89000971

House at 100 West Davis Boulevard (Mediterranean Revival Style Buildings of Davis Island MPS), 100 W. Davis Blvd., Tampa, 89000972

House at 116 West Davis Boulevard (Mediterranean Revival Style Buildings of Davis Island MPS), 116 W. Davis Blvd., Tampa, 89000973

House at 124 Baltic Circle (Mediterranean Revival Style Buildings of Davis Island MPS), 124 Baltic Cir., Tampa, 89000957

House at 125 Baltic Circle (Mediterranean Revival Style Buildings of Davis Island MPS), 125 Baltic Cir., Tampa, 89000958

House at 132 Baltic Circle (Mediterranean Revival Style Buildings of Davis Island MPS), 132 Baltic Cir., Tampa, 89000959

House at 161 Bosporous Avenue (Mediterranean Revival Style Buildings of Davis Island MPS), 161 Bosporous Ave., Tampa, 89000963

House at 190 Bosporous Avenue (Mediterranean Revival Style Buildings of Davis Island MPS), 190 Bosporous Ave., Tampa, 89000964

House at 200 Corsica Avenue (Mediterranean Revival Style Buildings of Davis Island MPS), 200 Corsica Ave., Tampa, 89000967

House at 202 Blanca Avenue (Mediterranean Revival Style Buildings of Davis Island MPS), 202 Blanca Ave., Tampa, 89000960

House at 220 Blanca Avenue (Mediterranean Revival Style Buildings of Davis Island MPS), 220 Blanca Ave., Tampa, 89000961

House at 301 Caspian Street (Mediterranean Revival Style Buildings of Davis Island MPS), 301 Caspian St., Tampa, 89000965

House at 36 Columbia Drive (Mediterranean Revival Style Buildings of Davis Island MPS), 36 Columbia Dr., Tampa 89000966
House at 418 Blanca Avenue (Mediterranean Revival Style Buildings of Davis Island MPS), 418 Blanca Ave., Tampa, 89000962
House at 53 Aegean Avenue (Mediterranean Revival Style Buildings of Davis Island MPS), 53 Aegean Ave., Tampa, 89000955
House at 59 Aegean Avenue (Mediterranean Revival Style Buildings of Davis Island MPS), 59 Aegean Ave., Tampa, 89000956
House at 84 Adalia Avenue (Mediterranean Revival Style Buildings of Davis Island MPS), 84 Adalia Ave., Tampa, 89000953
House at 97 Adriatic Avenue (Mediterranean Revival Style Buildings of Davis Island MPS), 97 Adriatic Ave., Tampa, 89000954
Place of Florence Apartments (Mediterranean Revival Style Buildings of Davis Island MPS), 45 E. Davis Blvd., Tampa, 89000969
Palmerin Hotel (Mediterranean Revival Style Buildings of Davis Island MPS), 115 E. Davis Blvd., Tampa, 89000970
Spanish Apartments (Mediterranean Revival Style Buildings of Davis Island MPS), 16 E. Davis Blvd., Tampa, 89000968

KENTUCKY

Oldham County

Ashwood Avenue Historic District (Pewee Valley MPS), Roughly Ash Ave. from La Grange Rd. to Elm Ave., Pewee Valley, 89000951
Central Avenue Historic District (Pewee Valley MPS), Roughly Central Ave. from Peace Ln. to Mt. Mercy Dr., Pewee Valley, 89000950
Wooldridge Avenue—La Grange Road Historic District (Pewee Valley MPS), Wooldridge Ave. and La Grange Rd., Pewee Valley, 89000952

NEW YORK

New York County

Dahlgren, Lucy Drexel, House, 15 E. 96th St., New York, 89000946

Suffolk County

Greenport Railroad Station, Third and Wiggins St., Greenport, 89000947

NORTH CAROLINA

New Hanover County

Walker, James, Nursing School Quarters, 1020 Rankin St., Wilmington, 89000944

OHIO

Noble County

SHENANDOAH Crash Sites, Near I-77 and Co. Rt. 37 and OH 78 W of Caldwell, Caldwell vicinity, 89000942

RHODE ISLAND

Providence County

Honan's Block and 112-114 Main Street (Woonsocket MRA), 110-114 Main St., Woonsocket, 89000941

Washington County

Druidsdream, 144 Gibson Ave., Narragansett, 89000940

The following property is also being considered for listing in the National Register:

SOUTH CAROLINA

Union County

Corinth Baptist Church, Union MPS, N. Herndon St., Union 89000939

[FR Doc. 89-15576 Filed 6-30-89; 8:45 am]
BILLING CODE 4310-70-M

BUREAU OF RECLAMATION

Proposed Arvin-Edison Water Storage and Exchange Program, Central Valley Project, California

AGENCY: Bureau of Reclamation.

ACTION: Notice of intent to prepare a draft environmental impact report/environmental impact statement (EIR/EIS).

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Council of Environmental Quality Guidelines (40-CFR, Part 1500), and Section 21002 of the California Environmental Quality Act, Reclamation, Arvin-Edison Water Storage District (Arvin-Edison), and the Metropolitan Water District of Southern California (MWD) intend to prepare a joint EIR/EIS. The purposes of the project are to provide more groundwater storage and better operating efficiencies for both Arvin-Edison and MWD. Reclamation involvement stems from the necessity to modify Arvin-Edison's existing water delivery contract.

MWD would be permitted to store up to 135,000 acre-feet of water per year in the groundwater basin beneath Arvin-Edison until a maximum of 800,000 acre-feet was reached. Arvin-Edison would use this stored groundwater during dry years while their Reclamation water was diverted for MWD use. MWD would fund construction of additional spreading basins, groundwater pumping facilities, and a water conveyance system in Arvin-Edison.

Meetings have been scheduled to solicit public input, determine alternatives to the proposed project, determine the scope of the EIR/EIS, and identify significant issues related to the proposed action.

DATE: The meetings will be held on July 17, 1989, at 1:30 p.m. in West Sacramento, California; and or on July 19, 1989, at 1:30 p.m. in Arvin, California.

ADDRESSES: Hotel El Rancho Resort, Conference Center, Forest Hills Room, 1029 West Capitol, West Sacramento, CA., Arvin High School Auditorium, Campus Drive, Arvin, CA.

FOR FURTHER INFORMATION CONTACT: Mr. Chip Bruss, Environmental Specialist, Bureau of Reclamation (Code: MP-750), Mid-Pacific Region, 2800 Cottage Way, Sacramento, CA 95825, Telephone (916)-978-5130; Mr. Cliff Trotter, Arvin-Edison Water Storage District, P.O. Box 175, Arvin, CA 93203, Telephone (805) 854-5573; or Dr. Roberta Soltz, Metropolitan Water District of Southern California, 1111 Sunset Boulevard, Los Angeles, CA 90012, Telephone (213) 250-6437.

SUPPLEMENTARY INFORMATION: The proposed construction would be confined to Arvin-Edison but funded by MWD. It would include the following features:

(1) Expanded Spreading Works—Approximately 600 acres of new spreading facilities would be constructed.

(2) Additional Pipeline Distribution System—Approximately 17 miles of underground pipeline would be installed to deliver water from the existing Arvin-Edison North Canal to approximately 5,000 acres of land within the existing Arvin-Edison groundwater service area.

(3) Additional Groundwater Extraction Facilities—To facilitate Arvin-Edison groundwater pumping during dry years, approximately 10 new wells would be drilled and the services of 37 existing wells would be acquired within the lands served by the new pipeline distribution system.

These facilities would be available for MWD use to store water from the State Water Project (SWP). During relatively wet years, MWD would provide a portion of its SWP entitlement water to Arvin-Edison. This water would be stored in the groundwater basin underlying Arvin-Edison. During drought years, water would be available for use by MWD through an exchange whereby Arvin-Edison would use the previously stored groundwater, and an equal amount of Reclamation Central Valley Project surface water would be available to MWD.

Anyone interested in more information concerning the proposed exchange or who has suggestions as to significant environmental issues should contact the people listed above.

Date: June 27, 1989.

B. E. Martin,

Assistant Commissioner—Resources Management.

[FR Doc. 89-15577 Filed 6-30-89; 8:45 am]
BILLING CODE 4310-09-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with the Department Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Consent Decree in *United States* v. *Browning-Ferris, Inc.*, was lodged with the United States District Court for the Southern District of Texas on June 13, 1989. The proposed decree provides for injunctive relief by requiring Browning-Ferris, Inc. to submit a new National Pollutant Discharge Elimination System permit limiting discharges from the company's treatment plant and surface water outfalls associated with its truck maintenance facility. The decree specifies chemical parameters to be sampled as well as the method and frequency of sampling. Further, the decree provides for a civil penalty payment of $104,800.

The Department of Justice will receive for a period of 30 days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Browning-Ferris, Inc.*, D.J. Ref. No. 90–7–1–448.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Texas; at the Region VI office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733; and at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, at the above address.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–15622 Filed 6–30–89; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Partial Consent Decree Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that on June 12, 1989, a proposed Consent Decree in *United States* v. *Homer Rasmussen, et al.*, Civil Action No. 88CV40010FL, was lodged with the United States District Court for the Eastern District of Michigan. The proposed Consent Decree partial settlement with two of the defendants in this action, Ford Motor Company and Chrysler Motors Corporation, for a portion of the claims asserted by the United States for costs incurred by the United States at the Rasmussen Dump Site in Livingston County, Michigan. The proposed Consent Decree requires the Ford Motor Company and Chrysler Motors Corporation to reimburse the United States for $530,000 in costs incurred at the Site. The Consent Decree resolves the liability of Ford and Chrysler for only $606,000 of the United States' past costs. The remainder of the action will be dismissed without prejudice against Ford and Chrysler.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Homer Rassmussen, et al.*, D.J. Ref. No. 90–11–3–281.

The proposed Consent Decree may be examined at the office of the United States Attorney, 113 Federal Building, 600 Church Street, Flint, Michigan 48504 and at the Region V Office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Donald A. Carr,

Acting Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 89–15623 Filed 6–30–89; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 34–89]

Privacy Act of 1974; New System of Records

This notice is provided pursuant to the Privacy Act of 1974 (5 U.S.C. 552a). The Department of Justice, Immigration and Naturalization Service (INS), proposes to alter and establish as a separate system of records its deportation and detention docket control records last published as part of its Case Control System, JUSTICE/INS–005, on December 11, 1987 (52 FR 47256). The new system, entitled "Deportable Alien Control System (DACS), JUSTICE/INS–012," expands the categories of records covered, extends the automated data base Servicewide, and adds new routine uses. It will continue to serve as a docket control system but also will contain additional data for INS use in pursuing efforts to arrest, detain, and deport aliens where appropriate. (The next revision of the Case Control System will reflect the removal of the deportation and detention records from that system of records.)

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on the new routine uses; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to conclude its review of the system. Therefore, please submit any comments by August 2, 1989. The public, OMB, and the Congress are invited to submit comments to Patricia E. Neely, Staff Assistant, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Room 529, 633 Indiana Avenue, NW., Washington, DC 20530.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on this system to OMB and the Congress.

The system description is printed below.

Date: June 20, 1989.

Harry H. Flickinger,

Assistant Attorney General for Administration.

Justice/INS–012

SYSTEM NAME:

Deportable Alien Control System (DACS).

SYSTEM LOCATION:

Central, Regional, District, and other offices of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS–999.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Aliens alleged to be deportable by INS.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system is a computer data base that contains biographic information about deportable aliens such as name, date and country of birth; United States and foreign addresses; file number, charge, amount of bond, hearing date, case assignment, scheduling date, section(s) of law under which deportability/excludability is alleged; data collected to support the INS position on deportability/excludability, including information on any criminal or subversive activities; date, place, and type of last entry into the United States; attorney/representative's identification number; family data, and other case-related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103, 1251, and 1252.

PURPOSE(S):

The system provides INS with an automated data base which assists in the arrest, deportation, or detention of aliens in accordance with immigration and nationality laws. It also serves as a docket and control system by providing management with information concerning the status and/or disposition of deportable aliens.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To clerks and judges of Federal courts exercising jurisdiction over the deportable aliens in determining grounds for deportation.

B. To other Federal, State, and local government law enforcement and regulatory agencies and foreign governments, including the Department of Defense and all components thereof, the Department of State, the Department of Treasury, the Central Intelligence Agency, the Selective Service System, the United States Coast Guard, the United Nations, and INTERPOL, and individuals and organizations during the course of investigation in the processing of a matter or during a proceeding within the purview of the immigration and nationality laws to elicit information required by INS to carry out its functions and statutory nandates.

C. Where there is an indication of a violation or potential violation of law (whether civil, criminal or regulatory in nature), to the appropriate agency (whether Federal, State, local or foreign), charged with the responsibility of investigating or prosecuting such violations, or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

D. Where there is an indication of a violation or potential violation of the immigration and nationality laws, or of a general statute within INS jurisdiction, or of a regulation, rule, or order issued pursuant thereto, to a court, magistrate, or administrative tribunal in the course of presenting evidence, and to opposing counsel during discovery.

E. Where there is an indication of a violation or potential violation of the law of another nation (whether civil or criminal), to the appropriate foreign government agency charged with enforcing or implementing such laws and to international organizations engaged in the collection and dissemination of intelligence concerning criminal activity.

F. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

G. To an applicant, petitioner or respondent or to his or her attorney or representative as defined in 8 CFR 1.1(j) in connection with any proceeding before INS.

H. To the news nedia and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

I. To a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

J. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

These records are stored in a data base on magnetic disks.

RETRIEVABILITY:

These records are retrieved by name and/or date of birth, A-file number, or by alien's Bureau of Prisons number, when applicable.

SAFEGUARDS:

INS offices are located in buildings under security guard, and access to premises is by official identification. Access to terminals is limited to INS employees with user identification numbers. Access to records in this system is by restricted password and is further protected by secondary passwords.

RETENTION AND DISPOSAL:

Deportable alien case control and detention records are deleted at the time of case closure. A retention and disposition schedule for the case summary and detention history records is currently being negotiated and will be submitted to the Archivist of the United States for approval.

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, Detention and Deportation, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above.

RECORDS ACCESS PROCEDURES:

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) Officer at the nearest INS Office, or the INS office maintaining the desired records (if known) by using the list of Principal Offices of the Immigration and Naturalization Service Appendix, JUSTICE/INS–999, published in the **Federal Register**. Clearly mark the envelope and letter "Privacy Act Request." Provide the A-file number and/or the full name and date of birth, with a notarized signature of the individual who is the subject of the record, and a return address.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information in the record to the FOIA/PA Officer at one of the addresses identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Privacy Act Request." The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

Basic information is obtained from "The Immigration and Naturalization Service (INS) Alien File (A File) and Central Index System, (CIS), JUSTICE/INS–001A." Information may also come from the alien, the alien's attorney/representative, INS officials, other Federal, State, local, and foreign agencies and the courts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 89-15624 Filed 6-30-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of June 1989.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-22,752; Aberdeen Sportwear, Inc., Trenton, NJ

TA-W-22,794; Texas Instrument, Inc., Midland, TX

TA-W-22,686; A.E. Hall Corp., New York, NY

TA-W-22,749; Universal Clothiers, New York, NY

TA-W-22,691; Carolace, New York, NY

TA-W-22,743; Tafco, Inc., Clearfield, PA

TA-W-22,584; Kellwood Co., Lonoke, AR

TA-W-22,725; Dougherty Brothers Co., Buena, NJ

TA-W-22,729; GIM Metal Products, Carle Place, NY

TA-W-22,733; Howmet Corp., Dover Casting Div., Dover, NJ

TA-W-22,784; Luxury Braid Co., Elizabeth, NJ

TA-W-22,776; Heinemann Electric Co., Lawrenceville, NJ

TA-W-22,753; Adobe Resources Corp., Midland, TX

TA-W-22,769; Engineered Yarns, Inc., Coventry, RI

TA-W-22,803; Bram Enterprise, Inc., Sheldon, WI

TA-W-22,804; Bram Enterprise, Inc., Hudson, WI

TA-W-22,786; Nabisco Brands, Inc., Fair Lawn, NJ

TA-W-22,765; Dialight Corp., Manasquan, NJ

TA-W-22,755; Amperex Electronic Co., Hicksville, NY

TA-W-22,832; SKF Industries, Inc., Hornell Div., Hornell, NY

TA-W-22,809; Fiber-Strong, Inc., Ladysmith, WI

TA-W-22,834; Tri-Din Filter Corp., Hawthorne, NJ

TA-W-22,772; Four Star Plastics Co., Jersey City, NJ

TA-W-22,829; Professional Steel Rule Die Corp., New York, NY

TA-W-22,766; DiFini Sportswear, Inc., Bronx, NY

TA-W-22,711; Primo Coat Co., New York, NY

TA-W-22,621; EG and G Princeton Applied Research, Princeton, NJ

In the following cases, the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-22,748; Trend Tex Associates, New York, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,754; Ambex Laboratories, East Rutherford, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,818; Mastercraft Casket Co., Ladysmith, WI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,761; Burwood Products Co., Traverse City, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,738; SKF Bearing Industries Co., Glasgow, KY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-22,728; Fleischman Distilling Co., Dayton, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,790; R.L.D. Dress Co., Cadillac, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,816; Irving Simes & Sons, Inc., New York, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,798; Warren Insulation Co., Inc., Hays, KS

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,909; Tioga Machine Shop, Inc., Tioga, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,773; GEI-United Plastics Co., Madison Heights, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,742; Spraytex, Inc., Spokane, WA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,727; Factron, (A Former Div. of Schlumberger Technology Corp), Latham, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,739; Seal Tech, Div. of Folsom Metal Products, Inc., Bessemer, AL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,713; Republic Converting Co., New York, NY

Aggregate U.S. imports of finished fabrics did not increase in the relevant period of 1988 compared to 1987.

TA-W-22,396; Featherlite Precast Corp., El Paso, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-22,817; Knomark, Inc., Jamaica, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–22,810; GNB Batteries-Gould, Lynchburg, VA

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–22,805; C.B. Cedar Co., Coos Bay, OR

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–22,792; St. Mary Manufacturing Corp., North Tonawanda, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–22,865; Northern Tank Line, Miles City, MT

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–22,528; Flake, Inc., Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–22,800; Abner Trucking Co., Clay City, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–22, 861; The Kroger Co Stores, #223, #281, #231, #284, #286, #304, Hixson, TN

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–22, 762; Crantex Fabrics, New York, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–22, 762A; Millworth Fabrics, New York NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–22, 757; Beef America, Inc., Denson, IA

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–22, 801; Anchor Glass Container Corp., Salem, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–22, 813; Harmon's Machine Works, Inc., Midland, TX

U.S. imports of oilfield machinery are negligible.

TA–W–22, 796; Trend International Limited, Denver, CO

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–22, 763; Dana Corp., Spicer Axle Div., New Castle, IN

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–22, 771; Florence Mining Co., Florence Mine #1, Indiana, PA

U.S. imports of bituminous steam coal, lignite and anthracite coal are negligible.

TA–W–22, 797; U.S. Enertek, Inc., Farmington, NM

U.S. imports of oilfield machinery are negligible.

TA–W–22, 797A; Xytec, Inc., Farmington, NM

U.S. imports of oilfield machinery are negligible.

TA–W–22, 833; Stahmann Farms, Inc., Las Cruces, NM

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–22, 819; Meridian Oil, Inc., Headquartered in Houston, TX

U.S. imports of natural gas liquids and liquified refinery gases declined absolutely and relative to domestic shipments in the first quarter of 1989 compared to the same period in 1988.

TA–W–22, 820; Meridian Oil, Inc., Houston Region, Houston, TX

U.S. imports of natural gas liquids and liquified refinery gases declined absolutely and relative to domestic shipments in the first quarter of 1989 compared to the same period in 1988.

TA–W–22, 821; Meridian Oil, Inc., Midland Region, Midland, TX

U.S. imports of natural gas liquids and liquified refinery gases declined absolutely and relative to domestic shipments in the first quarter of 1989 compared to the same period in 1988.

TA–W–22, 822; Meridian Oil, Inc., Farmington Region, Farmington, TX

U.S. imports of natural gas liquids and liquified refinery gases declined absolutely and relative to domestic shipments in the first quarter of 1989 compared to the same period in 1988.

TA–W–22, 823; Meridian Oil, Inc., Billings/Denver Region, Billings, MT

U.S. imports of natural gas liquids and liquified refinery gases declined absolutely and relative to domestic shipments in the first quarter of 1989 compared to the same period in 1988.

TA–W–22, 824; Meridian Oil, Inc., Billings/Denver Region, Denver, CO

U.S. imports of natural gas liquids and liquified refinery gases declined absolutely and relative to domestic shipments in the first quarter of 1989 compared to the same period in 1988.

Affirmative Determination

TA–W–22, 780; Jaclyn, Inc., West New York, NY

A certification was issued covering all workers separated on or after 1988.

TA–W–22, 707; Peabody House, New York NY

A certification was issued covering all workers separated on or after March 1, 1988.

TA–W–22, 764; Decatur Drilling Co., Decatur, IL

A certification was issued covering all workers separated on or after March 20, 1988.

TA–W–22, 751; AT& T Network Systems Microelectronics Group, Radford, VA

A certification was issued covering all workers separated on or after March 28, 1988.

TA–W–22, 756; Axem Resources, Inc., Denver, CO

A certification was issued covering all workers separated on or after October 31, 1988.

TA–W–22, 756A; Axem Resources, Inc., Belfield, ND

A certification was issued covering all workers separated on or after October 31, 1988.

TA–W–22,756B; Axem Resources, Inc., Gillette, WY

A certification was issued covering all workers separated on or after October 31, 1988.

TA–W–22,782; Lawrence-Cannon Drilling, Inc., Abilene TX

A certification was issued covering all workers separated on or after March 28, 1988 and before March 31, 1989.

TA–W–22,566; Calderon Belts & Bags, Inc., New York, NY

A certification was issued covering all workers separated on or after February 16, 1988.

TA–W–22,726; Dynamic Closures Corp., Massena, NY

A certification was issued covering all workers separated on or after September 1, 1988.

TA–W–22,697; Fountain Hill Mills, Inc., Bethlehem, PA

A certification was issued covering all workers separated on or after March 17, 1988 and before December 14, 1988.

TA–W–22,463; T.J. and C Oilfield Service, Hobbs, NM

A certification was issued covering all workers separated on or after January 3, 1988.

TA–W–22,767; Eastern Knitting, Blenheim, NJ

A certification was issued covering all workers separated on or after March 28, 1988.

TA–W–22,638; Modine Manufacturing Co., Trenton, MO

A certification was issued covering all workers separated on or after February 28, 1988.

TA–W–22,731; Harloc Products, Inc., West Haven, CT

A certification was issued covering all workers separated on or after March 30, 1989.

TA–W–22,737; Northland, Watertown, NY

A certification was issued covering all workers separated on or after March 23, 1988.

TA–W–22,807; Circle Rubber Corp., Newark, NJ

A certification was issued covering all workers separated on or after January 1, 1989.

TA–W–22,806; Carnival Bags, Brooklyn, NY

A certification was issued covering all workers separated on or after Arpil 6, 1988 and before June 19, 1989.

TA–W–22,811; Gemini Corp., Springfield, MA

A certification was issued covering all workers separated on or after April 4, 1988.

TA–W–22,835; Wells Mfg. Corp., Fond Du Lac, WI

A certification was issued covering all workers separated on or after January 1, 1989.

TA–W–22,802; Blackstone Drilling, Inc., McPherson, KS

A certification was issued covering all workers separated on or after March 27, 1988 and before December 1, 1988.

TA–W–22,808; The Devilbiss Co., Toledo, OH

A certification was issued covering all workers engaged in employment related to the production of spray guns separated on or after April 3, 1988.

TA–W–21,789; R & H Knitting Mills, Inc., Brooklyn NY

A certification was issued covering all workers separated on or after March 25, 1988 and before May 30, 1989.

TA–W–22,825; Modern Manufacturing Braid Co., New York NY

A certification was issued covering all workers separated on or after March 28, 1988.

TA–W–22,770; Excelled Sheepskin & Leather Coat Corp., Edison, NJ

A certification was issued covering all workers separated on or after March 30, 1988.

I hereby certify that the aforementioned determinations were issued during the month of June 1989. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 27, 1989.

Marvin M. Fooks

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–15601 Filed 6–30–89; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21,945]

Retamco Operating, Inc.; San Antonio, TX; Negative Determination on Reconsideration

After two filing extensions, the Department, on June 20, 1989, issued an Affirmative Determination Regarding Application for Reconsideration of the denial notice in the subject case. The original negative determination was published in the **Federal Register** on March 27, 1989 (54 FR 12498).

Investigation findings show that the workers produce crude oil and natural gas.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met during the period relevant to the petition. The "contributed importantly" test is generally demonstrated by a survey of the customers of the workers' firm. The Department's survey of Retamco's customers showed that none of the customers increased their import purchases of crude oil or natural gas while, at the same time, reducing their purchases from Retamco during the period applicable to the petition.

A company official claims that the Department's customer survey was inadequate and submitted an additional list of customers. Further, it is stated that the workers at Retamco should be certified because The Exploration Company which is owned, in part, by Retamco, has workers currently under a certification, TA–W–21,837.

On reconsideration, the Department found that most of the firms submitted on the additional list either were not customers or were customers in a period not relevant to the petition. In any event, none of these additional respondents indicated that they imported natural gas or crude oil during the relevant time period.

The fact that Retamco owns stock in The Exploration Company, also an oil and gas producer whose workers the Department certified eligible to apply for adjustment assistance under petition (TA–W–21,837) would not, in itself, provide a basis for certification. The Exploration Company is not a customer of Retamco nor does it control Retamco. The Exploration Company is a separate public corporation whose workers met all the worker group criteria for certification. None of the customers submitted by Retamco initially or on reconsideration reported increased import purchases of oil and gas while reducing their purchase from Retamco.

Conclusion

After reconsideration, I affirm the original notice of negative determination regarding eligiblity to apply for adjustment assistant to workers and former workers at Retamco Operating, Inc., San Antonio, Texas.

Signed at Washington, DC, this 26th day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89–15600 Filed 6–30–89; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–22,610]

The Timken Co., Plant #4, Columbus, OH; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at The Timken Company, Plant #4, Columbus, Ohio. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–22,610; The Timken Company, Plant #4, Columbus, Ohio (June 21, 1989).

Signed at Washington, DC, this 21st day of June 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89–15599 Filed 6–30–89; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–89–96–C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Island Creek Coal Company, P.O. Box 11430, Lexington, Kentucky 40575–1430 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Dobbin Mine (I.D. No. 46–05480), its Laurel Run Mine (I.D. No. 4602845), and its North Branch Mine (I.D. No. 46–01309) all located in Grant County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. As an alternate method, petitioner proposes to power the longwall mining system with high-voltage cables inby the last open crosscut and within 150 feet of pillar workings with specific equipment and conditions as outlined in the petition.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 2, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: June 23, 1989.

[FR Doc. 89–15602 Filed 6–30–89; 8:45 am]

BILLING CODE 4510–43–M

Pension and Welfare Benefits Administration

[Application No. D–7901 et al.]

Proposed Exemptions; Drs. Hodgin and Chongsiriwatana, P.A. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Drs. Hodgin and Chongsiriwatana, P.A., Profit Sharing Plan (the Plan), Located in Albuquerque, New Mexico

(Application No. D–7901)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and (b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed purchase (the Purchase) from Ulton G. Hodgin, M.D. (Dr. H) and his wife, Jean (collectively, the Applicants), by the individually directed acccunts (the Accounts) in the Plan of Dr. H and Krisna Chongsiriwatana, M.D. (Dr. C), trustees of the Plan and, as such, parties in interest with respect to the Plan, of one limited partnership unit (the Unit) for the greater of $71,550 or the appraised fair market value on the date of the transaction payable by $20,576 in cash and by the assumption of the Applicants' required capital contribution of $50,974; provided that the terms and conditions of the Purchase are at least as favorable to the Accounts as those obtainable in an arm's-length transaction with an unrelated party; and further provided that, at the time of acquisition, both Accounts' proportionate ownership share of the Unit shall not exceed 25% of each Account's assets.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with four participants and net assets of $319,804 as of November 30,

1988. As of that date, the Accounts held $195,510.48 on behalf of Dr. H and $105,302.86 on behalf of Dr. C.

2. The Applicants currently own the Unit of Oakland 20 (the Partnership), a New Mexico general partnership formed on March 26, 1985. The Partnership holds one sole asset, a 17.4 acre parcel of vacant land described as Lots 1–26, Block 27, Track A, Unit B of North Albuquerque Acres, Bernalillo County, New Mexico.

3. The Applicants believe that the Unit will appreciate in value and desire that the Accounts benefit from such appreciation. Accordingly, they now propose to sell the Unit to the Accounts at a price which will be either the lower of its acquisition and holding cost or its appraised fair market value. As of March 13, 1989, the Applicants have expended $53,657.50 as capital contributions to the Partnership and are required to make additional contributions of $50,974 over the next four years, totalling an aggregate cost of $104,631.50.

4. The Unit has been appraised by John Blatnik, A.S.A., of John Blatnik & Associates, Inc., a qualified appraiser in Albuquerque, New Mexico, who has represented that less than one percent of his gross annual revenue is derived from parties in interest with respect to the Plan. Mr. Blatnik determined that the Unit had a fair market value of $71,550 as of August 31, 1988. The Accounts will pay the Applicants $71,550 on the date of the Purchase, of which $20,576 will be in cash and $50,974 will be the assumption of the Applicants' capital contribution obligation to the Partnership, proportionately 65% by Dr. H's Account and 35% by Dr. C's Account in the Plan. The Accounts will pay no fees or commissions in connection with the Purchase. After consummation of the transaction, the proportionate share of each Account's ownership of the Unit will not exceed 25% of either Account's assets.

5. In summary, the Applicants represent that the transaction meets the statutory criteria of section 408(a) of the Act because: (a) The transaction involves less that 25% of each of the Accounts' assets; (b) The Purchase price will be the lower of the acquisition and holding costs to the Applicants of the Unit or the fair market value as established by a qualified independent appraisal; (c) Drs. C and H are the only Plan participants to be affected by the proposed transaction and they desire that the transaction be consummated; and (d) The Accounts will pay no fees or commissions in connection with the proposed transaction.

Notice to Interested Persons: Because Drs. C and H are the sole participants in the Plan to be affected by the proposed transaction, the Department has determined that there is no need to distribute the notice of pendency of the proposed exemption to interested persons. Comments and requests for hearing must be received within 30 days of the date of publication in the **Federal Register** of this notice of proposed exemption.

FOR FURTHER INFORMATION CONTACT: Mrs. B.S. Scott of the Department, telephone (202) 523–8194. (This is not a toll-free number).

Hunter Associates Laboratory, Inc. Profit Based Retirement Plan and Trust (the Plan), located in Reston, Virginia

[Application No. D–7906]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan to Hunter Associates Laboratory, Inc. (the Employer), the sponsor of the Plan, of (1) the Plan's rights with respect to an unsatisfied judgment (the Judgment) against the National Exchange Leasing Company (NELCO), and (2) the Plan's rights as creditor in a loan to Government Financial Services, Inc. (the GFS Loan), including any preferential payment refunds due from the Plan with respect thereto (collectively, the Claims); provided that all terms of such transactions are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined contribution individual-account pension plan with 150 participants and net assets of $2,250,707 as of June 30, 1988. The Employer is a closely-held Virginia corporation engaged in the operation of a commercial chemical research facility in Reston, Virginia. The trustees of the Plan (the Trustees) are Philip S. Hunter, Elizabeth Hunter, David Craun and Jane Hersey, each of whom is an employee, officer, director, or greater than ten percent shareholder of the Employer.

2. The Plan was adopted by the Employer effective July 1, 1982 and from that date until March of 1986 the Trustees engaged by contractual arrangement the services of Chesapeake Pension Consultants (Chesapeake) and Glen E. Dawson (Dawson) to act as the Plan's administrator and investment advisor. Chesapeake is a Maryland corporation of which Dawson is the president and sole shareholder. The Claims constitute two unsuccessful investments of Plan assets entered into upon Dawson's advice which the Employer proposes to remedy by purchasing from the Plan and thereby restoring to the Plan the funds invested therein. The Employer is requesting an exemption to permit such purchases as described herein.

3. On January 29, 1985, upon Dawson's advice the Trustees made a loan of $150,000 of Plan funds to NELCO, a Maryland corporation managed and controlled by George Kennedy (Kennedy), whom the Trustees represent to be a business associate of Dawson. In exchange for such loan, NELCO executed a promissory note (the Note) in favor of the Plan providing for monthly interest-only payments over two years at an interest rate of sixteen percent per annum and payable in full on January 25, 1987. With respect to the making of the loan to NELCO, the Trustees represent as follows:

(a) That Dawson knew or should have known that NELCO had little or no net worth, was highly illiquid and likely would be unable to repay the loan pursuant to the Note;

(b) That Dawson represented to the Trustees that the Note was secured fully by certain equipment leases as collateral (the Collateral);

(c) That Dawson failed to secure the Collateral or perfect a security agreement pertaining to the Note and concealed such failure from the Trustees; and

(d) That Dawson and Chesapeake received a fee from an affiliate of NELCO for the placement of the loan from the Plan to NELCO and concealed such fee from the Trustees.

In accordance with the Note NELCO commenced making monthly interest payments to the Plan on February 25, 1985 but made no further payments after August 1985. On February 13, 1987, the Trustees filed a lawsuit against NELCO and Kennedy on behalf of the Plan in the U. S. District Court for the District of Maryland seeking recovery of the full balance due under the Note. That Court entered the Judgment against NELCO and Kennedy on April 3, 1987, awarding the Plan $158,750 plus interest at the rate

of fourteen percent per annum from January 25, 1987 until paid, as well as reasonable costs and attorneys' fees. Thereafter, Kennedy filed a petition for bankruptcy in the U.S. Bankruptcy Court for the District of Maryland. The Judgment remains totally unsatisfied.

The Trustees represent that although the Plan has a lien on certain real property belonging to Kennedy, it is not likely that it will be sufficient to satisfy the Judgment. The Employer proposes to acquire the Judgment from the Plan by paying the Plan cash in the amount due under the Judgment. The amount proposed by the Employer to be paid to the Plan for the Judgment is $168,750, representing the Judgment's principal amount of $158,750 plus $10,000 of the interest which the Judgment awards on the principal amount from January 25, 1987 until paid. The Employer represents that if any amounts are recovered pursuant to the Judgment in excess of $168,750, such additional amounts will be applied to litigation expenses and the balance paid to the Plan.

4. In June of 1984, upon Dawson's advice the Trustees invested Plan funds in the GFS Loan, a loan in the principal amount of $100,000 to Government Financial Services, Inc. (GFS), a Maryland corporation in which Dawson was an initial investor. The GFS Loan was to be repaid over five years with interest at sixteen percent per annum. GFS commenced payment to the Plan in accordance with the GFS Loan on August 18, 1984. However, GFS made no further payments after September 1987, leaving an outstanding GFS Loan balance of $44,164.09.

Thereafter, in December of 1987, GFS filed a petition for bankruptcy in the U.S. Bankruptcy Court for the District of Maryland. The Trustees have caused to be filed with the bankruptcy court on behalf of the Plan a proof of claim against the bankrupt estate of GFS for the outstanding GFS Loan balance of $44,164.09. Subsequently, the Trustees represent that they were advised by counsel to the trustee of the bankrupt estate that the final two payments made by GFS to the Plan, in the total amount of $14,716.36, may constitute preferential transfers under section 547 of the U.S. Bankruptcy Code and, therefore, are possibly voidable by the bankruptcy trustee and subject to refund by the Plan.[1] The Employer proposes to acquire the Plan's claim against GFS arising from the GFS Loan by paying the Plan cash in the amount of its proof of claim filed in the bankruptcy court, $44,164.09, plus any amounts returned by the Plan to the bankruptcy trustee as preferential transfers.

The Employer represents that in the event, which the Employer represents to be unlikely, that any monies are recovered from Dawson or Chesapeake pursuant to the Claims in excess of the amounts paid by the Employer to the Plan for the Claims, such additional amounts will be applied to litigation expenses and the balance paid to the Plan.

5. Violations of various provisions of Title I of the Act and breaches of fiduciary duties thereunder by Dawson and Chesapeake were alleged by the Department in a lawsuit filed by the Department (the Lawsuit) against Dawson and Chesapeake (the Defendants) in the U.S. District court for the District of Maryland (Civil Action No. JFM–86–2536). The Lawsuit was filed on behalf of 46 pension plans (the Plaintiff Plans), including the Plans, for which the Defendants had acted as fiduciaries. By the terms of a Consent Order and Final Judgment (the Order) entered November 7, 1988, as resolution of the Lawsuit, the Defendants were ordered to pay a total of $70,000 to the Plaintiff Plans. Of that amount, the Plan received $2,089.04 as its pro rata share. The Department agreed to the terms of the Order on the basis of affidavits submitted by Dawson and Chesapeake disclosing their financial conditions and the Order includes the Defendants' agreement to pay to the Plaintiff Plans on a pro rata basis an amount equal to the value of any assets or income not disclosed in such affidavits upon a showing that such affidavits contained material misrepresentations. The Employer represents that the amount awarded to and received by the Plan under the Order does not reduce the amounts which the Employer will pay the Plan for the Claims.

6. The Trustees represent that it is in the best interests of the participants and beneficiaries of the Plan for the Employer to make the Plan whole for the losses resulting from Dawson's investment advice. After payment of the Claims by the Employer, if the requested exemption is granted, the Trustees will directly reimburse each participant account in the Plan in the amount of loss charged to each account as a result of the unsatisfied Claims. The Trustees represent that the Employer's proposal ensures that the Claims will be transferred at no less than their fair market value, due to the fixed nature of the Claims and the financial condition of the obligors under the Claims.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plan will recover losses which do not appear likely to be recovered in the absence of the proposed transaction; (2) The proposed transaction will prevent the Plan from sustaining additional losses from further nonpayment of the monies due under the Claims; and (3) The proposed transaction will transfer the Claims at no less than their market value.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Wells Fargo Bank, N.A. Located in San Francisco, California

[Application No. D–7933]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale for cash by the Crocker Real Estate Loan Fund (CRELF), a collective investment fund of qualified employee benefit plan assets, of certain first mortgage notes (the Notes) to Wells Fargo & Company (Wells Fargo), the fiduciary and therefore a party in interest with respect to CRELF, or to a subsidiary of Wells Fargo, provided that the price paid be no less than the fair market value of the Notes as of the date of sale as determined by an independent and qualified appraiser.

Summary of Facts and Representations

1. Wells Fargo Bank, N.A., is the principal subsidiary of Wells Fargo. On May 30, 1986, Wells Fargo acquired Crocker National Corporation and its subsidiary corporations, including its principal subsidiary, Crocker National Bank. Wells Fargo Bank was merged into Crocker National Bank on that date. As a result of the acquisition and merger, Wells Fargo Bank became the trustee of the Crocker Investment Funds for Employee Benefit Trusts, a Crocker National Bank-sponsored collective

[1] The Employer represents that as of February 27, 1989 there had been no attempt by the bankruptcy trustee to have such monies returned to the bankrupt's estate as a preferential transfer and that the Employer did not expect such an attempt to be made.

investment fund that offers several investment funds, including CRELF, which consists primarily of mortgage investments in income-producing properties.

2. Prior to the merger of Crocker National Bank and Wells Fargo Bank on May 30, 1986, Crocker National Bank decided to liquidate CRELF. The investments were frozen and an orderly disposition of assets was begun. After the merger, Wells Fargo Bank continued the ongoing management and liquidation of CRELF.

3. The Notes, consisting of a note secured by a first mortgage on a restaurant building in San Marcos, Texas, and a note secured by a first mortgage on a shopping center in Springfield, Illinois, are the only remaining assets in CRELF. A package of CRELF loans was sold to Drexel Burnham Lambert, Inc. (DBL) on May 15, 1986, on the condition that the buyer could reject individual mortgage subsequently found to be below standard. A second package of CRELF loans was sold to DBL on January 1, 1987 on the same terms. Both Notes were subsequently rejected by DBL and returned to Wells Fargo Bank.

4. The inability to complete the liquidation of CRELF has created hardships for some of the participating plans. During the process of liquidation some participating plans have terminated, and portions of the assets of the terminated plans have continued to be held in CRELF. Other participating plans have requested liquidation of assets invested in CRELF for various reasons, such as changes in investment strategies, and CRELF has not been able to comply with such requests.

5. Wells Fargo Bank desires to complete the liquidation of CRELF as soon as practicable. Consistent with its fiduciary obligations under ERISA, Wells Fargo Bank desires to sell the Notes for a price which will maximize the return to CRELF. However, there is no assurance that the Notes can be disposed of for fair market value by sale to a third party purchaser or prepayment by the borrower. It is therefore proposed that Wells Fargo purchase the Notes for the current fair market value in cash as determined by an independent appraiser.

6. The Notes continue to be marketed, and Wells Fargo Bank has offered to discount the notes to the borrowers. The borrower for the Springfield, Illinois property did not respond to the offer. If a third party purchaser makes a firm offer to purchase that note at or above the purchase price proposed by Wells Fargo, Wells Fargo Bank will so dispose of the asset rather than by sale to Wells Fargo.

The borrower for the San Marcos, Texas property accepted the offer to repurchase the note. If the borrower is able to tender payment, Wells Fargo Bank will sell the note to him rather than to Wells Fargo. If the borrower is unable to repurchase the note and no other purchaser comes forward, it is proposed that the note be sold to Wells Fargo.

7. The applicant appointed The Karsten Companies (Karsten) to serve as the independent fiduciary with regard to the proposed sale. Founded in 1969, Karsten concentrates on providing real estate sales and development advisory assistance to major corporations, financial institutions, and public institutions, and has regularly asssumed major responsibilities with respect to the management and investment of retirement plan assets. Karsten is not affiliated with Wells Fargo in any way.

On November 15, 1988, Karsten determined the fair market value of the loan on the Illinois property to be $1,310,482, and the fair market value of the loan on the Texas property to be $183,340, for a total of $1,493,822 for the two Notes.

8. Karsten identified four alternative strategies for dealing with the notes: (a) Discount the Notes to the borrower in order to induce prepayment in an amount equal to or more than Karsten's estimate of net realizable value; (b) sell the Notes to Wells Fargo for an all cash price equal to or greater than Karsten's estimate of net realizable value; (c) sell the Notes to an unrelated third party for an all cash price equal to or greater than Karsten's estimate of net realizable value; or (d) hold the Notes for long term investment yield. Karsten recommended alternative (a) as the optimal strategy since it would produce the highest recovery if it could be successfully negotiated. If alternative (a) could not be negotiated, Karsten recommended alternative (b) as the most advantageous strategy and therefore in the best interests of CRELF participants. In accordance with Karsten's recommendation, Wells Fargo has requested an exemption to purchase the Notes.

9. In summary, the applicant represents that the proposed transaction will meet the statutory criteria of section 408(a) of the Act because: (a) the Notes will be sold for their fair market value as of the date of sale as determined by an independent and qualified appraiser; (b) the participating plans will not be liable for any fees, commissions, or taxes in connection with the proposed transaction; (c) the proposed transaction is a one-time sale for cash, which can be easily verified; (d) the proposed transaction will permit Wells Fargo Bank to complete the liquidation of CRELF, thus permitting participating employee benefit plans which are terminating to wind up their affairs; and (e) Karsten, acting as independent fiduciary with respect to the sale, has determined that the transaction is protective of the rights and in the best interest of the participating plans and their participants.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Drs. Elliott, Halseth and Walker, P.C. Money Purchase Pension Plan (the Pension Plan) and Drs. Elliott, Halseth and Walker, P.C. Profit Sharing Plan for William L. Halseth, M.D. (the PS Plan; collectively, the Plans), located in Denver, Colorado

[Application Nos. D-7961 and D-7962]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed purchase from the Plans of two promissory notes by William L. Halseth, M.D. (Dr. Halseth), a party in interest with respect to the Plans, provided that all terms of such transaction are at least as favorable to the Plans as those which the Plans could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plans are defined contribution plans sponsored by Drs. Elliott, Halseth and Walker, P.C. (the Employer), a closely-held Colorado professional corporation engaged in the practice of medicine in Denver, Colorado. The Pension Plan is an individual account plan with six participants and total assets of $4,253,408 as of October 31, 1988. The Pension Plan provides for individual participant direction of the investments of the participant accounts. As of October 31, 1988 Dr. Halseth's account (the Account) in the Pension Plan had total assets of $1,149,823.59. The trustees of the Pension Plan are Dr.

Halseth, Donald P. Elliott, M.D. and E. Lance Walker, M.D. each of whom is an employee, officer and director of the Employer, an owner of one third of the outstanding stock of the Employer and a participant in the Pension Plan. Dr. Halseth is the only participant and trustee of the PS Plan, which had total assets of $105,917.63 as of October 31, 1988.

At Dr. Halseth's direction in 1987, the Account and the PS Plan each invested in promissory notes (the Notes) with the Imperial Mortgage Company (Imperial) of Englewood, Colorado. Dr. Halseth represents that the Notes have proven to be unfavorable investments and is requesting an exemption to permit him to purchase them from the Plans under the circumstances described herein.

2. Dr. Halseth represents that he made the investments in the Notes on behalf of the Account and the PS Plan in good faith pursuant to an offering circular (the Offering) issued by Imperial, a Colorado corporation engaged in the provision of short-term loan and other credit services in connection with the real estate brokerage services of Crown Realty Company (Crown), the parent corporation of Imperial. Dr. Halseth represents that he and the Plans are independent of and unrelated to Imperial, except as investors in the Notes. The Offering provided that the promissory notes issued thereunder by Imperial were to be unsecured obligations of Imperial which were not to be obligations of or guaranteed by Crown.

The Notes constitute the Plans' investments of a total of $284,000 in promissory notes issued pursuant to the Offering as follows: Dr. Halseth directed the investment by the Account in a promissory note executed by Imperial in the principal amount of $200,000 on January 21, 1987. On March 10, 1987, Dr. Halseth directed the investment by the PS Plan in a promissory note executed by Imperial in the principal amount of $84,000. The Plans paid cash to Imperial in exchange for the Notes. Each of the Notes provided for interest at the rate of ten percent per annum payable in full with principal six months from date of execution.

3. Dr. Halseth represents that Imperial defaulted on the Notes upon their maturities and that Imperial remains in default of its obligations under both Notes. To collect the amounts due the Account and the PS Plan under the Notes, the Trustees filed a civil lawsuit on behalf of the PS Plan and the Account in the state district court for the County of Arapahoe in Colorado (Civil Action No. 87CV1953, Division No. 3). That court entered a judgment order (the Judgment) against Imperial on April 12, 1988 in favor of the Plans for the amounts due under the Notes. The Employer represents that court costs, attorneys' fees and other expenses of obtaining the Judgment were borne by the Employer. Dr. Halseth represents that Imperial has paid the Plans no amount pursuant to the Judgment, that the Judgment remains unsatisfied and that the obligations under the Notes remain outstanding.

On May 16, 1988 Imperial filed in Federal district court in Denver, Colorado a petition in bankruptcy under Chapter 7 of the U.S. Code. Dr. Halseth represents that the sole asset of Imperial at the time of the bankruptcy petition was a promissory note executed in favor of Imperial by Van Schaak and Company (Van Shaak), a Colorado corporation. However, on January 6, 1989, prior to any payment of the Judgment by the bankruptcy trust, Van Shaak filed for bankruptcy under Chapter 11 of the U.S. Code. Accordingly, Dr. Halseth maintains that there are no assets of Imperial with which to pay the claims of Imperial's creditors, including the Plans. In order to enable the Account and the PS Plan to recoup their investments in the Notes, Dr. Halseth proposes to purchase the Notes for cash in the amount of the Notes' face values, consisting of the principal amount paid for each Note and the interest on such principal at the rate of ten percent per annum for six months as provided by each Note.

4. Dr. Halseth represents that because of the bankruptcies of Imperial and Van Shaak and the apparent lack of any assets from which the bankruptcy trustees might provide for payment of the Notes, the market values of the Notes are less than the Notes' original purchase prices. Dr. Halseth represents that the Trustees have determined that under prevailing circumstances the Notes cannot be negotiated or otherwise disposed of and that Dr. Halseth constitutes the only willing buyer of the Notes. Dr. Halseth maintains that his proposed purchase of the Notes at their face values constitutes the only means available to the Plans to recover the investments in the Notes and the interest provided for in the Notes. Dr. Halseth emphasizes that the Notes were purchased at his direction exclusively for his segregated account in the Pension Plan and for his sole benefit as the sole participant in the PS Plan and that, accordingly, Dr. Halseth is the sole participant in the Plans to be affected by the Notes and their proposed purchase by Dr. Halseth. Dr. Halseth represents that the Plans will pay no fees or commissions in connection with the proposed transaction and that the terms of the sale which he proposes are more favorable to the Plans than the Plans could obtain in an arm's-length transaction with an unrelated party.

5. In summary, the applicant represents that the criteria of section 408(a) of the Act are satisfied in the proposed transaction for the following reasons: (1) The Plans will receive cash for the Notes in the amount of their face values, which is no less than their fair market values; (2) The proposed transaction will enable the Plans to recoup their investments in the Notes, which have produced no income for the Plans and which have market values below the amount of the Plans' initial investments in the Notes; (3) The Plans will pay no fees, commissions or other expenses in connection with the proposed sale of the Notes; and (4) Dr. Halseth, who desires that the proposed transaction be consummated, is the only participant in the Plans to be affected by the proposed transaction.

Notice To Interested Persons: Because Dr. Halseth is the sole participant in the PS Plan and the only participant in the Pension Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of publication of this notice of proposed exemption.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Hawaii Carpenters Annuity Fund (the Annuity Fund) and Hawaii Carpenters Financial Security Fund (the FS Fund) Located in Honolulu, Hawaii

[Application Nos. D-8048 and D-8049]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to the proposed transfer of assets from the Annuity Fund to the FS Fund, provided each of the assets will be valued at its fair market value at the time of the transfer.[2]

[2] The applicants have represented that the two funds are not parties in interest with respect to one another within the meaning of section 3(14) of the Act. Accordingly, no relief is being provided herein from the restrictions of section 406(a) of the Act.

Summary of Facts and Representations

1. The Annuity Fund and the FS Fund are substantially identical defined contribution plans formed pursuant to collective bargaining agreements entered into between the United Brotherhood of Carpenters and Joiners of America, Local 745, AFL–CIO, the General Contractors Labor Association, and the Building Industry Labor Association (collectively, the Bargaining Parties). The Annuity Fund, which was formed in 1978, has approximately 4,435 participants. The FS Fund has approximately 3,390 participants. The participants and beneficiaries of the Annuity Fund and the FS Fund are substantially the same persons, but are not identical due to normal turnover.

2. The Annuity Fund and the FS Fund are each governed by a board of trustees consisting of five trustees appointed by contributing employers and five trustees appointed by the union. Six of the ten individuals appointed as trustees of each fund have also been appointed as trustees of the other fund.

3. As a part of collective bargaining negotiations, the Bargaining Parties entered into a letter agreement dated November 30, 1987. Among other things, the letter agreement called for: 1) The formation of the FS Fund (which was accomplished March 1, 1988); and 2) the termination of the Annuity Fund by no later than March 1, 1990. These transactions are being undertaken in order to implement a supplemental benefit to be provided by the Hawaii Carpenters Pension Fund (a defined benefit plan formed pursuant to collective bargaining agreements entered into between the Bargaining Parties). The amount of the supplemental benefit will depend in part on the participant's account balance in the FS Fund (other than any portions thereof derived from rollover contributions, including rollover contributions from the Annuity Fund).

4. Upon the termination of the Annuity Fund, it is anticipated that a large number of the Annuity Fund participants will elect to rollover their Annuity Fund account balances into the FS Fund. In general, these rollovers will be accomplished through direct plan-to-plan transfers of assets from the Annuity Fund to the FS Fund. The assets to be transferred will consist of cash, publicly traded securities, and/or other assets held by the Annuity Fund as of the date of its termination. For each participant who elects to rollover his account, the value of the assets transferred to the FS Fund will be equal to the value of his account in the Annuity Fund.

5. It is anticipated that the transfer of assets from the Annuity Fund to the FS Fund will be made upon or shortly after the termination of the Annuity Fund. For purposes of the transfer, each of the assets will be deemed to have a value equal to the fair market value thereof determined upon the termination of the Annuity Fund (i.e., cash will be valued at its face value, publicly traded securities will be valued based on trading prices on applicable security exchanges, and other assets will be appraised).

6. The trustees of the two funds have requested the proposed exemption to accommodate the participants of both funds. The applicants represent that the proposed exemption to permit the direct transfer of assets from the Annuity Fund to the FS Fund will facilitate the goal of participants in the Annuity Fund who desire to rollover their account balances to the FS Fund.

7. In summary, the applicants represent that the proposed transaction meets the criteria of section 408(a) of the Act because: 1) The transaction involves a one-time transfer of assets; 2) the assets to be transferred will be valued at their fair market value at the time of the transfer; and 3) the transaction will facilitate the desired rollover of assets by the participants in the Annuity Fund upon its termination to their accounts in the FS Fund.

For further information contact: Gary Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Electrical Workers Local Union No. 103, I.B.E.W., Health and Welfare [the Welfare Fund), Deferred Income Fund (the Deferred Income Fund), Pension Fund (the Pension Fund), and Holiday, Vacation and Supplementary Unemployment Benefits Fund (the Vacation and SUB Fund; collectively, the Funds), Located in Boston, Massachusetts

[Application Nos. D–7893 thru D–7896]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to the proposed leasing of certain office space, and the provision of incidental services and goods relating to such office space, to the Funds by the Local 103, I.B.E.W., Building Corporation (the Building Corporation), a corporation which is wholly-owned by the Local Union No. 103 of the International Brotherhood of Electrical Workers, AFL-CIO (the Union), a party in interest with respect to the Funds, provided that the terms of the transactions are at least as favorable to the Funds as the terms which the Funds could obtain in arm's-length transactions with an unrelated party.

Effective Date: If the proposed exemption is granted, the exemption will be effective July 14, 1988.

Summary of Facts and Representations

1. The Funds are multiemployer trusts created pursuant to section 302(c) of the Labor Management Relations Act of 1947, as amended, which provide health, pension, vacation, holiday, unemployment and related benefits. As of November 21, 1988, the Welfare Fund had 2775 participants, the Deferred Income Fund had 3342 participants, the Pension Fund had 3385 participants, and the Vacation and SUB Fund had 2775 participants. The Funds were created by various collective bargaining agreements with the Union which require contributions to the Funds by participating employers.

2. Each of the Funds is administered by six trustees (the Trustees), three of whom are appointed by the Union (the Union Trustees) and three of whom are appointed by an employers' association known as the Electrical Contractors Association of Greater Boston, Inc., Boston Chapter, National Electrical Contractors Association (the Association). The Union Trustees are William Walker, president of the Union, Russell Sheehan, business manager of the Union, and John O'Donnell, treasurer of the Union. The Union Trustees are also the directors of the Building Corporation. The Trustees appointed by the Association are David MacKay, John Penney and Alfred Rotman (the Employer Trustees). The Employer Trustees are not affiliated with either the Union or the Building Corporation.

3. The Welfare Fund currently leases office space at 10 High Street, Boston, Massachusetts, from KNH Realty Trust, an unrelated party, and charges the other Funds their proportionate shares of the expenses for their use of such space.

The Union has its business offices and other facilities in a building (the Building) located at 256 Freeport Street, Dorchester, Massachusetts. The Building is owned by the Building Corporation. The first floor of the Building is occupied by the Union and includes Union offices and a Union member meeting hall. Union members are also participants in the Funds.

4. The Trustees have been negotiating a proposal by the Union to lease the second floor of the Building to the Funds. The Trustees intend to enter into a lease agreement (the Lease) with the Building Corporation for such space. The applicant states that the Lease would constitute the payment by a plan for office space to a party in interest, within the meaning of section 408(b)(2) of the Act. The applicant states further that the Lease would otherwise meet the requirements of 29 CFR 2550.408b–2, relating to section 408(b)(2), and be statutorily exempt from the prohibitions of section 406(a) of the Act, but for the participation by the Union Trustees in the decision to have the Funds engage in the proposed transaction.[3] The Lease and the Declaration of Trust for the Funds state that the Trustees cannot enter into the Lease without the discussion, consideration and vote of the Union Trustees, all of whom are officers of the Union. However, if the Union Trustees exercise their fiduciary authority to effectuate the Lease, the transaction may constitute a violation of section 406(b)(2) of the Act.

The Trustees are requesting an exemption, effective July 14, 1988 (for reasons discussed below), to permit the Funds to lease office space in the Building, in accordance with the terms of the Lease, and to allow the provision of incidental services and goods relating to the Lease by the Building Corporation or the Union.

5. The Lease has an initial term of five years with three extension terms, each one for an additional five year period. During the initial term, the annual rent will be fixed at $15 per square foot. During the first extension term, the annual rent will be fixed at $18 per square foot, which represents a compound growth rate of 3.7 percent. During the third and fourth extension terms, the annual rent will be set at 95% of the prevailing fair market rent for such office space, as established by an independent appraiser, for the first month of that extended term. All rents for each of the terms will be paid by the Funds in equal monthly installments.

In addition, the Lease requires the Funds to pay a proportional part of any increase in the real estate tax liability in excess of the tax imposed on the Building as reassessed after completion of the improvements made to the space which the Funds will lease. The Building Corporation will pay all utilities under the Lease. However, the Funds will be responsible for telephone expenses.

The Funds may individually or jointly terminate the Lease upon sixty days notice to the Building Corporation, or a shorter time which would be considered reasonable under the circumstances, without penalty. The Lease states that no rent, fees, assessments or penalties may be charged to the Funds on account of such early termination. Finally, the Lease has a strict tenant security clause which insures the confidentiality of the Funds' records.

6. The Trustees have employed the services of the Boston Valuation Group, Inc. (the Group), an independent, qualified real estate appraisal and consulting firm in Weymouth, Massachusetts, to represent the Funds with respect to the Lease. On July 14, 1988, the Trustees signed an agreement with the Group (the Agreement) under which the Group agreed to serve as a fiduciary of the Funds within the meaning of section 3(21) of the Act. The Group represents that it is an experienced and knowledgeable fiduciary under the Act, which is wholly independent of and unrelated to the Building Corporation, the Union, and the Trustees.

Under the Agreement, the Group agreed to perform the following services: (i) To aid in the negotiation by the Funds with the Union regarding the terms of the Lease, (ii) to render an independent evaluation and opinion of such terms and determine whether the Lease would be in the best interests of the Funds, (iii) to appraise the fair market rental value of the Funds' proposed office space in the Building, and (iv) to monitor the terms and conditions of the Lease over the duration of the Lease and provide the Trustees with annual reports as to whether any changes in market conditions or other circumstances has occurred which would render the Lease no longer in the best interests of the Funds.

7. The applicant states that the Group actively participated in the negotiation of the terms of the Lease on behalf of the Funds by attending various conferences with the Union, along with the Funds' Administrator, James L. McCoy, during July and August 1988. During such conferences, the parties discussed various matters concerning the Funds' office needs in connection with the proposed space in the Building. The Group was supplied with information on these matters, including copies of the Funds' current leases and the architect's plans for the second floor of the Building.

The Union and the Group reached an agreement concerning the terms of the Lease in November 1988, and such terms were agreed to by the Trustees.

8. The proposed office space in the Building was appraised on November 21, 1988 by Edward Wadsworth, M.A.I. (Mr. Wadsworth), an independent, qualified real estate appraiser in Weymouth, Massachusetts. Mr. Wadsworth is also president of the Group. Mr. Wadsworth states that the fair market rental value of the Funds' proposed space, taking into consideration the proposed improvements to such space, would be at least $15.00 per square foot. Mr. Wadsworth's appraisal is based on an analysis of similar properties in the greater Boston area.

In addition, Mr. Wadsworth updated his appraisal of the proposed space on April 12, 1989. Mr. Wadsworth states that based on current lease rates for similar space, the fair market rental value of the Funds' proposed space would be approximately $16.00 per square foot, as of April 1, 1989.

9. By letter dated November 28, 1988, Mr. Wadsworth analyzed the terms of the Lease as a representative of the Group under the Agreement. Mr. Wadsworth represents that the proposed transactions would be in the best interests of the participants and beneficiaries of the Funds. Mr. Wadsworth states that the proposed rental rate is a more advantageous rate than the Funds' current rental and at least as favorable a rate to the Funds as other comparable rentals in the greater Boston area. In addition, Mr. Wadsworth states that the other terms of the Lease are standard in the industry, as favorable as the Funds' current rental, and at least as favorable as leases for comparable rentals in the area.

Mr. Wadsworth states further that the Lease provides some specific provisions designed to be beneficial to the Funds, such as an early termination clause without penalty and a strict tenant security clause to ensure the confidentiality of the Funds' records. Mr. Wadsworth notes that the location of the proposed office space will be advantageous for the Funds since the Building is located close to major highways. The Funds' participants, most of whom are Union members, are familiar with the location and can be expected to be transacting business at the Building on a regular basis. The proposed office space will centralize into one area most of the services provided to the participants and beneficiaries of the Funds. Mr. Wadsworth also notes that the proposed

[3] The Department expresses no opinion as to whether the Lease constitutes the payment by a plan for office space to a party in interest within the meaning of section 408(b)(2) of the Act or whether the Lease is statutorily exempt from the prohibitions of section 406(a) of the Act by virtue of section 408(b)(2) of the Act.

office space will have sufficient free parking adjacent to the Building for participants and beneficiaries transacting business with the Funds, which is a distinct advantage over the Funds' current rental and over comparable rentals in the Boston area.

10. The Group represents that it will monitor the Lease on behalf of the Funds throughout its duration and will decide whether the Funds should renew the Lease for each of the five-year extension periods. The Group will also monitor the provision of incidental services and goods to the Funds by the Union and the Building Corporation to ensure that such transactions are necessary for the Fund's operations and are at least as favorable to the Funds as arm's length transactions between unrelated parties.

11. In summary, the applicant represents that the statutory criteria of section 408(a) of the Act are satisfied with respect to the Lease because: (a) The Group, acting as independent fiduciary on behalf of the Funds, has participated in the negotiations of the terms of Lease and has determined that the proposed transactions will be in the best interests of the participants and beneficiaries of the Funds; (b) the proposed office space for the Funds has been appraised by an independent, qualified appraiser, who has determined that the proposed rental rate for such space will be at least as favorable a rate as comparable facilities in the area; and (c) the interests of the Funds under the Lease will be represented by the Group, an experienced independent fiduciary, who will monitor the terms and conditions of the Lease throughout its duration and will provide periodic reports to the Trustees, at least annually, regarding any changes in market conditions or other circumstances which may effect the best interests of the Funds.

For further information contact: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 28th day of June 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89–15606 Filed 6–30–89; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 89–57; Exemption Application No. D–7598 et al.]

Grant of Individual Exemptions; Separate Mortgage and Real Estate Account of New England and Mutual Life Insurance Co., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Separate mortgage and real estate account (the separate account) of New England Mutual Life Insurance Company, located in Boston, MA

[Prohibited Transaction Exemption 89–57; Exemption Application No. D–7598].

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of

certain mortgage and real estate investments by the Separate Account to the general account of New England Mutual Life Insurance Company, a party in interest with respect to the plans participating in the Separate Account, provided that the terms of sale are not less favorable to the Separate Account than those terms obtainable in an arm's-length transaction with an unrelated party at the time the transaction is executed.

EFFECTIVE DATE: This exemption will be effective for a twelve-month period from the date of grant.

For a more complete statement of facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 26, 1989 at 54 FR 18044.

FOR FURTHER INFORMATION CONTACT: B.S. Scott of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

South Shore Renal Physicians, P.C. Restated Employees Pension Plan (the Plan), Located in Port Washington, New York

[Prohibited Transaction Exemption 89-58; Exemption Application No. D-7612].

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by the reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a loan of money from the Plan to 256 Broadway Realty Co., a party in interest with respect to the Plan, provided that the terms of the loan are at least as favorable as the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 4, 1989, at 54 FR 13581.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Empire Acceptance Company, Inc., Profit Sharing Plan (the Plan), Located in Greensboro, North Carolina

[Prohibited Transaction Exemption 89-59; Exemption Application No. D-7683].

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply for a period of five years to the sale of certain mortgage notes to the Plan by Empire Acceptance Company, Inc. (the Employer) and to the guarantee by the Employer to repurchase any mortgage notes which are in default and to the repurchase by the Employer of such mortgage notes, provided that the terms of the transactions are at least as favorable as those the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 20, 1989, at 54 FR 16019.

FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a Prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 28th day of June, 1989.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-15605 Filed 6-30-89; 8:45 am]

BILLING CODE 4510-29-M

LIBRARY OF CONGRESS

National Film Preservation Board; Public Meeting; July 19, 1989, Los Angeles

AGENCY: Library of Congress, National Film Preservation Board.

ACTION: Notice of public meeting.

This notice is issued pursuant to Pub. L. 100-446, The National Film Preservation Act of 1988, 2 U.S.C. 178, by Dr. James H. Billington, the Librarian of Congress, to inform the public that the next meeting of the National Film Preservation Board will be held in Los Angeles, on the campus of the University of California at Los Angeles (UCLA) on July 19, 1989 at 1 p.m. in Melnitz Hall, Room 1409 (located near the intersection of Sunset Boulevard and Hilgard Avenue).

FOR FURTHER INFORMATION CONTACT: Eric Schwartz, Counsel, The National Film Preservation Board, Library of Congress, Washington, DC 20540. Telephone: (202) 707-8350.

Dated: June 27, 1989.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 89-15572 Filed 6-30-89; 8:45 am]

BILLING CODE 1410-01-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Cancelled Meeting

ACTION: Cancellation of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) notice is hereby given of cancellation of a public meeting of the National Commission for Employment Policy at the Aristocrat Hotel, Dallas, Texas, 75201. The notice of meeting, scheduled for Tuesday, July 11, 1989, was published in the **Federal Register** on Friday June 23, 1989, at 54 FR 26454.

FOR FURTHER INFORMATION, CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300,

Washington, DC 20005, telephone (202) 724–1545.

Signed at Washington, DC, this 27th day of June, 1989.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 89–15603 Filed 6–30–89; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Choreographers Study Cooperative Agreement; Request for Proposals

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for a study of choreographers working in New York City and three other metropolitan areas in nonprofit dance areas such as ballet, modern, and ethnic dance, with regard to their characteristics and working conditions. The work will include conducting Advisory Committee meetings and reporting on their deliberations, preparing a work plan for building a universe list of choreographers in each city, drafting survey instruments, mailing of questionnaires and follow-up, tabulation and analysis of the survey results, and preparation of a final narrative report analyzing the results of the group meetings and surveys in each city and offering a substantive overview of the condition and needs of choreographers. Those interested in receiving the Solicitation package should reference Program Solicitation PS 89–10 in their request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 89–10 will be available approximately July 21, 1989 with proposals due on August 21, 1989.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, Room 217, 1100 Pennsylvania Ave., NW. Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel or Anna Mott, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW. Washington, DC 20506 (202/682–5482).

William I. Hummel,

Director, Contracts and Procurement Division, National Endowment for the Arts.

[FR Doc. 89–15625 Filed 6–30–89; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

The Cleveland Electric Illuminating Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–58, issued to The Cleveland Electric Iluminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company, (the licensees), for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise Attachment 1 of the Facility Operating License to incorporate by reference the licensees' February 10, 1989 "First refuel HED Revisions Report," reflecting revised commitments for resolution of human engineering deficiencies (HEDs) identified during their detailed control room design review.

The proposed action is in accordance with the licensees' application for amendment dated February 10, 1989.

The Need for the Proposed Action

The proposed change to Attachment 1 of the license is required in order to document the result of the licensees' recent reassessment of the remaining HEDs which were scheduled for completion prior to the end of the first refueling outage and to document the licensees' revised commitments as a result of this reassessment.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the license and concludes that the HEDs for which the licensees are revising their commitments are non-safety significant and the revisions are generally minor in nature or reflect the licensees' reassessment that the deficiencies no longer need correction and are considered closed. The staff has evaluated each of the licensees' revised commitments and has found them acceptable. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

The Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on March 21, 1989 (54 FR 11598). No request for hearing or petition for leave to intervene was filed following this notice.

With regard to potential nonradiological impacts, the proposed change to the license involves revisions to commitments for resolution of HEDs resulting from the detailed control room design review. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no signifiant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to operation of the Perry Nuclear Power Plant, Unit Nos. 1 and 2, dated August 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated February 10, 1989 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 26th day of June 1989.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects—III, Iv, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-15608 Filed 6-30-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-482]

Wolf Creek Nuclear Operating Corp.; Wolf Creek Generating Station—Issuance of Director's Decision Under 10 CFR 2.206 (DD-89-4)

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has denied a Petition under 10 CFR 2.206 filed by the Kansas Chapter of the Sierra Club (hereinafter referred to as the Petitioners). The Petitioners asked the U.S. Nuclear Regulatory Commission (NRC) to accomplish the following:

1. Suspend the operating license for Wolf Creek Generating Station, Burlington, Kansas.

2. Before reinstating the operating license:

a. The NRC should reopen its Office of Investigations Case No. 4-86-004 to provide sound technical reasons for its conclusion that this nuclear power plant is safe enough to operate in spite of all of its investigative conclusions regarding quality assurance problems.

b. The NRC should review all of its information in quality assurance at Wolf Creek developed subsequent to the issuance of Case No. 4-86-004 and covering operations at Wolf Creek through 1989 to provide sound technical reasons for its conclusion that this nuclear power plant is safe enough to operate.

c. All corrective actions determined by NRC to be necessary to achieve a level of operating safety that complies with Federal regulations should be incorporated as conditions of the operating license, and if these conditions are not met, the operating license should be revoked.

d. The following persons, whose activities were detailed in Mr. Griffin's report of Case No. 4-86-004 because of their alleged failures to safeguard the integrity of Wolf Creek quality assurance programs and their alleged lack of competence to identify and resolve real safety concerns, be barred from any and all involvement or participation in activities at Wolf Creek Generating Station whether as a salaried employee, a contract employee, a consultant, a volunteer, a manager or in any other position:

(i) William Rudolph,

(ii) Glenn Koester,

(iii) Robert L. Scott,

(iv) Charles Snyder,

(v) Any other individual who the NRC determines has prevented Wolf Creek Generating Station from complying with Federal quality assurance regulations in a culpable manner.

The Petitioners' request has been denied for the reasons fully described in the Director's Decision (DD-89-4) under 10 CFR 2.206, issued on this date, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and the Local Public Document Rooms for the Wolf Creek Generating Station located at Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and Washburn University School of Law Library, Topeka, Kansas.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission twenty-five (25) days after issuance, unless the Commission, on its own motion, institutes review of the decision within that period.

Dated at Rockville, Maryland, this 26th day of June 1989.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 89-15607 Filed 6-30-89; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05-0168

Mesirow Capital Partners SBIC, Ltd.; License Surrender

Notice is hereby given that Mesirow Capital Partners SBIC, Ltd., 135 So. La Salle St., Chicago, IL 60803 has surrendered its license to operate as a small business investment company under Section 301(c) of the Small Business Investment Act of 1958, as amended (the Act). Mesirow Capital Partners SBIC, Inc. was licensed by the Small Business Administration on July 7, 1982.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on June 6, 1989, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: June 23, 1989.

[FR Doc. 89-15614 Filed 6-30-89; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Phoenix, will hold a public meeting at 9:30 a.m. on Tuesday, June 27, 1989, at the SBA Phoenix District Office, First Floor Conference Room, 2005 North Central Avenue, Phoenix, Arizona to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James P. Guyer, District Director, U.S. Small Business Administration, 2005 North Central Avenue, 5th Floor, Phoenix, Arizona 85004, phone (602) 261-3737.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 26, 1989.

[FR Doc. 89-15613 Filed 6-30-89; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Denver, will hold a public meeting at 9:00 a.m. on Thursday, June 29, 1989, at the SBA Regional Office, 999 18th Street, Suite 701, Denver, Colorado to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Gilbert M. Cisneros, Regional

Administrator, U.S. Small Business Administration, Region VIII, 999 18th Street, Suite 701, Denver, Colorado 80202.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 26, 1989.

[FR Doc. 89–15615 Filed 6–30–89; 8:45 am]

BILLING CODE 8025–01–M

Region III Advisory Council; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Baltimore, will hold a public meeting from 3:00 p.m. to 5:00 p.m. on Thursday, July 27, 1989, at the Maryland Small Business Development Center, 123 West 24th Street, Baltimore, Maryland to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Charles J. Gaston, District Director, U.S. Small Business Administration, 10 North Calvert Street, 3rd Floor, Baltimore, Maryland 21202, phone (301) 962–2054.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 26, 1989.

[FR Doc. 89–15609 Filed 6–30–89; 8:45 am]

BILLING CODE 8025–01–M

Region V Advisory Council; Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Minneapolis/St. Paul, will hold a public meeting on Thursday, August 4, 1989 at 1:00 p.m. at the U.S. Small Business Administration District Office, 610–C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present.

For further information, write or call Edward A. Daum, District Director, U.S. Small Business Administration, 610–C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota 55403, phone (612) 370–2306.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 26, 1989.

[FR Doc. 89–15610 Filed 6–30–89; 8:45 am]

BILLING CODE 8025–01–M

Region VII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Omaha, will hold a public meeting beginning at 9:00 a.m. on Thursday, July 27, 1989, at the SBA office, 11145 Mill Valley Road, Omaha, Nebraska, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert W. Horner, District Director, U.S. Small Business Administration, 11145 Mill Valley Road, Omaha, Nebraska 68154, phone (402) 221–3620.

Jean M. Nowak,

Director, Office of Advisory Councils.

June 26, 1989.

[FR Doc. 89–15611 Filed 6–30–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 1114]

Certain Nonimmigrant Visas; Validity

Notice is hereby given that consular officers are authorized to issue, in their discretion, nonimmigrant visas under section 101(a)(15)(B) of the Immigration and Nationality Act (temporary visitors for business or pleasure) valid for an indefinite period of time to otherwise eligible nationals of the countries listed below, which offer reciprocal or more liberal treatment to nationals of the United States who are in a similar class.

This order, which adds Costa Rica and France to the list (effective July 1, 1989), amends the country name of St. Christopher-Nevis to read St. Kitts and Nevis, and incorporates recent amendments, will be amended from time to time to include other countries which accord similar privileges to U.S. nationals.

Anguilla
Antigua and Barbuda
Aruba
Austria
Bahamas (B–2 only)
Barbados
Belgium
Belize
Bermuda
Bolivia
Botswana
Canada
Cayman Islands
Chile
Costa Rica
Cyprus
Denmark
Dominica
Fiji
Finland
France
Germany, Federal Republic of
Gibraltar
Greece
Grenada
Guatemala
Hong Kong
Iceland
Ireland
Israel
Italy
Jamaica
Lesotho
Liechtenstein
Luxembourg
Malawi
Malaysia
Maldives
Malta
Mauritius
Mexico
Monaco
Morocco
Netherlands
Netherlands Antilles
New Zealand
Norway
Panama
Paraguay
Peru
Philippines
Portugal
St. Kitts and Nevis
St. Lucia
St. Pierre and Miquelon
St. Vincent and the Grenadines
San Marino
Seychelles
Singapore
Spain
Swaziland
Sweden
Switzerland
Thailand
Tonga
Trinidad and Tobago
Tunisia
Turkey
Tuvalu
United Kingdom
Uruguay
Venezuela
Virgin Islands, British

Public Notice 913 of August 22, 1984, issued at 49 FR 33392, and amendments thereto are hereby superseded.

Date: June 27, 1989.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 89–15564 Filed 6–30–89; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 89–6–52]

Fitness Determination of Champlain Enterprises, Inc. d/b/a Commutair

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Champlain Enterprises, Inc. d/b/a Commutair is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, Room 6401, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Air Carrier Fitness Division, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366–2342.

Dated: June 28, 1989

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-15646 Filed 6-28-89; 4:12 pm]

BILLING CODE 4910-62-M

Formulation of a National Transportation Policy: Outreach for Issues, Positions, Problems and Recommended Solutions

AGENCY: Office of the Secretary, DOT.

ACTION: Request for comments.

SUMMARY: The Department of Transportation is requesting comments from interested parties on transportation issues, positions, and recommended solutions. The Department seeks to broaden its knowledge and garner consensus for a national policy. The information will be used as input to the Secretary of Transportation's National Transportation Policy Statement.

DATE: Comments must be received on or before September 1, 1989, in order to be fully considered in the development of the national transportation policy.

Comments should be sent to the Departmental staff persons(s) heading one or more of the transportation market "cluster" groups listed below:

Urban/Suburban Transportation

Mr. John Cline, Associate Administrator for Budget and Policy, Urban Mass Transportation Administration, Room 9310, 400 Seventh Street SW., Washington, DC 20590 Ph: (202) 366-4050.

Rural Transportation

Mr. H. Joseph Rhodes, Director, Office of Policy Development, Federal Highway Administration, Room 3317, 400 Seventh Street SW., Washington, DC 20590 Ph: (202) 366-0587.

Intercity Freight Transportation

Mr. Bill Watt, Associate Administrator for Policy, Federal Railroad Administration, Room 8300, 400 Seventh Street SW., Washington, DC 20590 Ph: (202) 366-0173.

Intercity Passenger Transportation

Mr. Dale McDaniel, Acting Associate Administrator for Policy, Planning, and International Aviation, Federal Aviation Administration, Room 934A, 800 Independence Avenue SW., Washington, DC 20591 Ph: (202) 267-9105.

International Transportation

Mr. Arnold Levine, Director, International Transportation and Trade, Office of the Secretary, Room 10300, 400 Seventh Street SW, Washington, DC 20590 Ph: (202) 366-4368.

Innovation and Human Factors in Transportation

Mr. Mark Dowis, Executive Assistant to the Administrator, Research and Special Programs Administration, Room 8410, 400 Seventh Street SW, Washington, DC 20590 Ph: (202) 366-4461.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick V. Murphy, Deputy Assistant Secretary, Policy and International Affairs, Room 10228, 400 Seventh Street SW, Washington, DC 20590 (202) 366-4551.

For Further Information on the Overall Policy Development Process: Dr. Anthony R. Kane, National Transportation Policy Team Director, Room 5102A, 400 Seventh Street SW, Washington, DC 20590, (202) 366-6231.

SUPPLEMENTARY INFORMATION: A top priority of the Department of Transportation during the remainder of 1989 will be to develop a comprehensive national transportation policy and accompanying implementation strategies which reflect the role of transportation in a changing national and international environment. Early next year, the Secretary of Transportation will issue a National Transportation Policy Statement that will set forth the policy guidelines and strategies for meeting the Nation's transportation needs over the next decade and into the 21st Century. As such, it will provide the framework through which decisions on transportation infrastructure, services, and related needs can be systematically assessed and implemented.

In order to stimulate a discussion of issues, problems and solutions from a multimodal perspective, development of the National Transportation Policy will be organized largely by transportation market areas, with senior Departmental staff conducting analyses based on information and opinions from a variety of sources. The transportation market "clusters" to be examined will include:

- Urban/suburban transportation systems and services: People and goods moving within metropolitan areas.
- Rural transportation systems and services: People and goods moving within and between less populated areas.
- Intercity freight: domestic transportation systems and services: Goods moving long distance within the United States.
- Intercity passenger: domestic transportation systems and services: People moving long distance within the United States.
- International transportation systems and services: People and goods moving from or to the United States.
- Innovation and human factors in transportation: New technologies and the interplay of users and providers with transportation systems.

Concurrent with these market segment analyses, a series of seminars will be held to examine cross-cutting issues having broad implications for the development of a national transportation policy. Preliminary plans call for seminars addressing special needs of the transportation disadvantaged, transportation and energy, national security transportation needs, environmental considerations in achieving national transportation goals, and transportation's role in economic growth.

A critical component of this overall policy development process will be to solicit information and opinions from transportation users, the transportation industry, interest groups (including government agencies), transportation employees, and the Congress. Views on major issues, problems, and possible solutions related to the transportation market "clusters" listed above are being solicited by this notice. To facilitate this exchange, many of the Cluster Groups will hold meetings and public hearings throughout the nation during July and August at places and times to be announced.

A context document that examines the current transportation system and its external environment, and further describes the national transportation policy development process and key issues to be addressed will be available to the public in July.

Paramount among the concerns to be addressed in formulating a comprehensive national transportation policy are:

- *Infrastructure.* Our transportation infrastructure, parts of which have been in service for over a century, is wearing out.
- *International Trade.* If America is to be competitive in the growing global marketplace, the U.S. transportation system must move goods and people with high performance and low cost.
- *Growth in Demand.* As economic activity grows, the demand for transportation services increases. Even moderate rates of travel growth over the next 2 decades will result in a significant increase (50 to 100 percent) from today.
- *Equity and Access.* Certain segments of our society—the elderly, the

handicapped, the poor, and rural residents and businesses—cannot participate fully in our national transportation systems, and the cost of providing that service can be very high. As the Nation's population ages over the next few decades, the challenge of providing access for all will grow.

• *The Environment.* Transportation has been a major contributor to the Nation's environmental problems, with increasingly serious implications for the future.

• *Safety.* Despite improvements in transportation safety in recent years, there continue to be too many accidents and fatalities.

• *Petroleum Dependence.* The Nation—and our transportation system in particular—remains vulnerable to possible disruptions in oil supply due to increasing dependence on foreign oil.

• *National Security.* Assuring the civil transportation sector's ability to meet national security defense needs is a challenge, particularly for the declining maritime industry. We must also assess methods to protect civil transportation resources used in international trade against terrorism and other threats.

In summary, there are a number of key questions regarding the Nation's transportation system that must be considered in formulating a national transportation policy. These include:

1. What factors have the greatest effect on the performance and efficiency of the transportation systems serving a market?

2. Have the full costs of our current transportation systems been identified? If not, what are the "hidden" costs and who pays them? Do these "hidden" costs distort market choices?

3. How do changes in transportation user costs create or diminish economic development opportunities? To what extent do such costs influence business location/relocation decisions?

4. What role does transportation have in providing employment opportunities for disadvantaged persons?

5. Should the relationship between transportation and economic development be addressed at a regional, state, or multi-state level, rather than in the context of local economic development objectives?

6. Within a market, what transportation services are considered essential to maintaining the vital social and economic needs of society?

7. How can market mechanisms influencing the supply and demand of transportation services address the question of basic mobility and accessibility requirements?

8. How should additional safety and security requirements be balanced with respect to their public benefits and economic consequences?

9. Are transportation safety and security levels adequate and are standards for safety and security responsive to service changes and threats within particular markets?

10. What actions should be taken to address the civil transportation sector's capability to meet national security requirements, both in support of defense deployments and maintaining the civil economy?

11. What aspects of transportation systems, land use patterns, and public transportation policies have the greatest effect in creating or mitigating adverse environmental consequences?

12. How should environmental impacts or "costs" be calculated, and how should such costs be considered in transportation investment decisions?

13. What mechanisms are most appropriate in allocating environmentally related costs?

14. Is the design and operation of the transportation system responsive to market demands?

15. Are transportation management techniques more effective in improving service levels and quality than major capital investments?

16. Do the incremental costs of adding new service exceed the point at which the user is willing or able to pay for the costs of the improvements?

17. What investment strategies are most appropriate in developing the competitive strength of competing transportation systems?

18. Should improvements to the public infrastructure be limited to projects demonstrating the greatest user demand and the greatest efficiency?

19. In reviewing investment options, what factors should be examined in considering whether an institution has the financial capability to maintain and operate all aspects of its transportation network as well as its non transportation financial obligations?

20. Do the overlapping roles and responsibilities of Federal, state, and local agencies lead to conflicting regulatory requirements and investment decisions?

21. Who bears the responsibility for assuring that transportation decision-makers consider the investment priorities and interrelationships among transportation systems and markets?

Comment by all parties on these and other transportation issues is welcome.

Issued this 28th day of June, 1989, in Washington, DC.

Patrick V. Murphy,

Deputy Assistant Secretary, Office of Policy and International Affairs.

[FR Doc. 89-15592 Filed 6-30-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 23, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, P.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0887
Form Number: 8281
Type of Review: Revision
Title: Information Return for Publicly Offered Original Issue Discount Instruments (OID)
Description: Form 8281 is filed by the issuer of a publicly offered debt instrument having OID. The information is used to update Publication 1212, List of Original Issue Discount Instruments
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 500
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping, 5 hours, 1 minute
Learning about the law or the form, 18 minutes
Preparing, copying, assembling, and sending the form to IRS, 23 minutes
Frequency of Response: On occasion
Estimated total Recordkeeping/Reporting Burden: 2,855 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive

Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89–15587 Filed 6–30–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 26, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, P.L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0010
Form Number: W–4
Type of Review: Extension
Title: Employee's Withholding Allowance Certificate
Description: Employees must file this form to tell employers (1) the number of withholding allowances claimed, (2) dollar amount they want withholding increased each pay period, and (3) if they are entitled to claim exemption from withholding. Employers use this information to figure the correct tax to withhold from the employee's wages
Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 53,405,000
Estimated Burden Hours Per Response:
Recordkeeping, 46 minutes
Learning about the law or the form, 10 minutes
Preparing the form, 70 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 112,150,500 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89–15588 Filed 6–30–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 27, 1989.

The Department of Treasury has submitted the following public information collecion requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, P.L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0675
Form Number: 1040EZ
Type of Review: Revision
Title: Income Tax Return for Single Filers with No Dependents
Description: This form is used by certain single individuals to report their income subject to income tax and to compute their correct tax liability. The data is also used to verify that the items reported on the form are correct and are also for general statistics use
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeepers: 19,067,000
Estimated Burden Hours Per Response:
Recordkeeping, 5 minutes
Learning about the law or the form, 18 minutes
Preparing the form, 30 minutes
Copying, assembling, and sending the form to IRS, 27 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 21,550,896 hours

OMB Number: 1545–1008
Form Number: 8582
Type of Review: Revision
Title: Passive Activity Loss Limitations
Description: Under section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax return. Worksheet 1 and 2 in the instructions are used to figure the amount to be entered on line 1 and 2 of Form 8582, and worksheets 3 through 6 are used to allocate the loss allowed back to individual activities
Respondents: Individuals or households, Farms, Businesses or other for-profit
Estimated Number of Respondents/ Recordkeepers: 14,900,000
Estimated Burden Hours Per Response:
Recordkeeping, 40 minutes
Learning about the law or the form, 1 hour, 11 minutes
Preparing the form, 1 hour, 24 minutes
Copying, assembling, and sending the form to IRS, 20 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 55,428,000 hours

OMB Number: 1545–1091
Form Number: 8810
Type of Review: Revision
Title: Corporate Passive Activity Loss and Credit Limitations
Description: Under Section 469, losses and credits from passive activities, to the extent they exceed passive income (or in the case of credits, the tax attributable to net passive income), are not allowed. Form 8810 is used by personal service corporations and closely held corporations to figure the passive activity loss and credits allowed and the amount of loss and credit to be reported to their tax return
Respondents: Business or other for-profit
Estimated Number of Respondents/ Recordkeepers: 100,000
Estimated Burden Hours Per Response:
Recordkeeping, 41 hours, 22 minutes
Learning about the law or the form, 4 hours, 40 minutes
Preparing and sending the form to IRS, 5 hours, 33 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 6,079,000 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Rom 5571, 1111 Constitution Avenue NW, Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Department Reports, Management Officer.

[FR Doc. 89–15589 Filed 6–30–89; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Wage Committee; Meeting

The Department of Veterans Affairs (VA) in accordance with Pub. L. 92–463, gives notice that meetings of the VA Wage Committee will be held on: Thursday, July 27, 1989, at 2:00 p.m., Thursday, August 10, 1989, at 2:00 p.m., Thursday, August 24, 1989, at 2:00 p.m., Thursday, September 7, 1989, at 2:00 p.m., Thursday, September 21, 1989, at 2:00 p.m.

The meetings will be held in Room 300, Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be hald in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c) (2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: June 26, 1989.

By Direction of the Secretary.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89–15573 Filed 6–30–89; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 126
Monday, July 3, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

STATE JUSTICE INSTITUTE

TIME AND DATE:

9:00 a.m. to 5:00 p.m., July 13, 1989
9:00 a.m. to 5:00 p.m., July 14, 1989

PLACE: State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia 22314.

STATUS: The meeting will be open to the public, except for a brief period on the afternoon of July 13 to discuss personnel matters.

MATTERS TO BE CONSIDERED:

Portions Open to the Public:
Consideration of applications submitted for Institute funding; discussion of FY 1990 Proposed Guideline.

Portions Closed to the Public:
Discussion of internal personnel matters.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 89–15678 Filed 6–29–89; 1:51 pm]

BILLING CODE 6820-SC-M

Corrections

Federal Register
Vol. 54, No. 126
Monday, July 3, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 89-094]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Tomato Plants

Correction

In notice document 89-13865 beginning on page 24924 in the issue of Monday, June 12, 1989, make the following corrections:

1. On page 24924, in the first column, in the **SUMMARY**, in the 11th line, "HDl" should read "HD1".

2. On the same page, in the second column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the seventh line, "HDl" should read "HD1".

3. On the same page, in the third column, in designated paragraph 1, in the second line, "HDl" should read "HD1".

4. On the same page, in the same column, in the same paragraph, in the 10th line, "pollution" should read "pollination".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-89-1917; FR-2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities to Assist the Homeless

Correction

In notice document 89-14830 beginning on page 26421 in the issue of Friday, June 23, 1989, make the following correction:

On page 26421, in the third column, in the second line, "HUD" should read "HHS".

BILLING CODE 1505-01-D

federal register

Monday
July 3, 1989

Part II

Department of Education

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps; Notices

DEPARTMENT OF EDUCATION

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal years 1989 and 1990.

SUMMARY: The Secretary of Education announces final funding priorities for fiscal years 1989 and 1990 for service activities to be supported under the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps of the Rehabilitation Services Administration (RSA).

EFFECTIVE DATE: These final priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these final priorities, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: D. Ray Fuller, Jr., Division of Resource Development, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3314), Washington, DC 20202–2649. (Telephone: (202) 732–1494—voice; (202) 732–1349—TDD).

SUPPLEMENTARY INFORMATION: Grants under the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps are authorized by Title III, section 311(a)(1) of the Rehabilitation Act of 1973, as amended. The purpose of this program is to expand and otherwise improve rehabilitation services to individuals with the most severe handicaps.

Under the Program of Special Projects and Demonstrations, awards are made to State and other public and nonprofit agencies and organizations.

On February 16, 1989, the Secretary published a notice of proposed priorities for this program in the **Federal Register** (54 FR 7156). Two changes have been made since publication of the proposed priorities. Under Priority 1—Rehabilitation Technology Services, additional examples have been included to clarify the model to assess the satisfaction of consumers with assistive devices. Under Priority 2—Innovative Strategies to Promote Vocational and Independent Living Outcomes, language has been inserted to include job coaches and community-based instruction as additional examples of mechanisms that can be used by projects to assist individuals with disabilities in their use of social networks.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, 13 parties submitted comments on the proposed priorities. An analysis of the comments and of the changes in the priorities since publication of the notice of proposed priorities follows.

Priority 1—Rehabilitation Technology Services

Comment: One commenter suggested that additional examples be provided to clarify the proposed model to assess the satisfaction of consumers with assistive devices. The commenter recommended that the priority specify that access to information, availability of needed services, timeliness of provision of services, and training in the use of devices are areas of consumer satisfaction that can be evaluated.

Discussion: The Secretary agrees that additional examples would help to clarify this rehabilitation technology services model.

Changes: The priority has been revised to provide additional examples of topic areas that may be investigated in assessing the satisfaction of consumers with assistive devices.

Comment: One commenter encouraged the addition of a second priority in the area of assistive technology services that would focus on increasing personnel who understand and can provide supported employment and assistive technology services.

Discussion: The Secretary agrees that there is a need to increase personnel who understand and can provide supported employment and assistive technology services. However, training projects cannot be funded under the Program of Special Projects and Demonstrations, which is designed to provide rehabilitation services to individuals with the most severe disabilities. A more appropriate funding source would be the Rehabilitation Training Program, which supports projects to increase the supply of qualified personnel to deliver rehabilitation services.

Changes: None.

Comment: One commenter suggested that proposed models four through seven would be more appropriately addressed by Rehabilitation Engineering Centers (RECs) funded by the National Institute on Disability and Rehabilitation Research (NIDRR) because the models focus on the devices themselves rather than the actual use of assistive devices in the delivery of rehabilitation services. The commenter also stated that some of these proposed models are already being funded by a number of RECs through NIDRR funding.

Discussion: While it is true that some NIDRR supported RECs are conducting technology research in certain of these areas, the proposed models to be funded under the Program of Special Projects and Demonstrations do not duplicate these efforts. Rather, they are intended to complement and build on any relevant REC research findings by applying those research findings to develop models to deliver rehabilitation services. The priority specifically requires that applicants, in developing their proposals, take into consideration relevant REC research activities in order to promote the implementation of research findings through the development of service models.

Changes: None.

Comment: One commenter recommended the addition of another priority model for a local community-based system of rehabilitation technology service delivery as an integral part of a supported employment program for individuals who face multiple barriers to employment.

Discussion: The Secretary believes that individuals who are eligible for supported employment services qualify as an underserved population and that the type of model recommended by the commenter could be supported under the second model described in the notice for this priority. The Secretary does not, therefore, agree that the priority needs to be modified to fund this type of project. The Secretary also believes that the recommended model could be funded under the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Disabilities—Community-Based Projects. A fiscal year 1989 notice inviting applications for new awards under this program was published in the **Federal Register** on March 24, 1989. The closing date for the submittal of applications in response to that announcement was May 22, 1989.

Changes: None.

Comment: One commenter recommended the addition of a model to increase the availability of quality assurance indicators, such as certification of personnel, accreditation of facilities or other measures that may be appropriate to the provision of rehabilitation technology services. The

commenter further expressed concern that a major impediment to the systematic growth of rehabilitation technology services is the lack of quality assurance indicators.

Discussion: The Secretary agrees that a model designed to increase the availability of quality assurance indicators for the provision of rehabilitation technology services has merit. However, projects supported under the Program of Special Projects and Demonstrations must provide improved or expanded vocational rehabilitation services to individuals with severe disabilities. Because the recommended model appears to be directed more toward the development and dissemination of quality controls to evaluate the effectiveness of rehabilitation technology services rather than service delivery, support of this type of model could not be done under the Program of Special Projects and Demonstrations. While the primary focus of a technology model under the Program of Special Projects and Demonstrations must be service delivery, the applicant may build into the scope of the project quality control indicators that are secondary in focus and directly related to the project.

Changes: None.

Comment: One commenter recommended that reference to volunteer and peer networks be removed from proposed model three in the priority because a Federal initiative fostering unpaid and nonprofessional services runs the real risk of impeding the development of statewide programs to provide technology services.

Discussion: The described priority does not require the use of volunteer and peer networks but rather lists them as examples of mechanisms that may be used to provide long-term technology assistance. The Secretary does not agree that the use of volunteer and peer networks will impede the development of statewide technology programs.

Changes: None.

Priority 2—Innovative Strategies to Promote Vocational and Independent Living Outcomes

Comment: One commenter recommended that special consideration be given to projects that would serve persons with mental impairments, particularly those with severe impairments. Another commenter suggested adding language that specifically includes individuals with autism, severe learning disabilities, serious emotional disturbances, traumatic brain injury, and severe and profound handicaps. Another commenter suggested the specific inclusion of people with Acquired Immune Deficiency Syndrome (AIDS).

Discussion: The Secretary does not believe it is necessary to identify specifically in the priority particular disability populations that may be served by projects funded under the priority. The priority clearly applies to "individuals with severe handicaps," as defined in applicable program regulations in 34 CFR 369.4(b). Therefore, applicants may propose a demonstration project to serve any disability population covered by this definition.

Changes: None.

Comment: One commenter recommended the addition of job coaches and community-based instruction to the illustrative list of mechanisms in the priority that may be used to assist individuals with severe disabilities to use typical social networks.

Discussion: The Secretary agrees that job coaches and community-based instruction are valuable aids that projects may use to assist individuals with disabilities to achieve vocational and other goals.

Changes: The priority has been revised to include job coaches and community-based instruction as examples of mechanisms that can be used to assist individuals with disabilities in the achievement of their vocational and independent living goals.

Comment: One commenter suggested that the Program of Special Projects and Demonstrations fund Independent Living Centers to achieve the involvement of individuals with disabilities in the planning and implementation of the project.

Discussion: Under the statutory authority for the Program of Special Projects and Demonstrations, States or other public or nonprofit agencies and organizations are eligible to apply for grant assistance. The statutory authority for this program does not permit the limitation of funding to Centers for Independent Living only. In addition, the Secretary believes that eligible applicants should be given the flexibility to identify the particular manner in which they would involve individuals with disabilities in the planning and implementation of the project. The Department considers the involvement of individuals with disabilities in the planning and implementation of the project to be of critical importance. The selection criteria to be used in this competition have been amended, therefore, to permit reviewers to direct special attention to assessing the project's plan of operation in terms of its involvement of individuals with disabilities in the planning and implementation of the project.

Changes: None.

Comment: One commenter was concerned about the need to train independent living center board and executive staff members in organizational management skills that are necessary to initiate and develop programs to promote vocational rehabilitation and independent living outcomes on a long-term basis.

Discussion: The statutory authority for the Program of Special Projects and Demonstrations does not authorize the award of grants for the training of personnel. The Rehabilitation Services Administration does, however, administer the Rehabilitation Training Program. Under this program, grants may be awarded to increase the supply of qualified personnel available for employment in public and private agencies and institutions involved in the vocational and independent living rehabilitation of individuals with disabilities, especially those with the most severe disabilities. A fiscal year 1989 notice inviting applications for new awards under the Rehabilitation Long-Term Training Program of the Rehabilitation Training Program was published on February 6, 1989. That notice identified Independent Living as one of the areas in which funds would be available for the training of personnel.

Changes: None.

Other Comments

Comment: One commenter proposed the addition of a third priority focusing on potential funding for Client Assistance Programs (CAPs).

Discussion: In addition to funding for the two described priorities, funds will also be available under the Program of Special Projects and Demonstrations for the support of projects under a "Non-Priority" category. This will permit the Department the flexibility to support projects that are not responsive to the two described priorities, including client assistance programs that are eligible entities under the Program of Special Projects and Demonstrations and that are not subject to the independence requirement in 34 CFR 370.2(c).

Changes: None.

Comment: One commenter recommended that language be added to assure that training would occur in "natural environments" to guarantee that networking would be functional for individuals served.

Discussion: Projects funded under the described priority must propose projects that include a plan of operation to

improve and expand services to individuals with disabilities. A project that focuses on networking must demonstrate the achievement of vocational and independent living outcomes as a result of those activities.

Change: None.

Final Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary will set aside funds and give an absolute preference to applications that respond to the final funding priorities under the program described in this notice for fiscal years 1989 and 1990; that is, the Secretary will select for funding only those applications proposing projects that meet one of these priorities.

The publication of these priorities does not bind the United States Department of Education to fund projects in these service areas, unless otherwise specified by statute. Funding of particular projects depends on the availability of funds and the quality of the applications received.

Priority 1—Rehabilitation Technology Services

There is increasing awareness that the application of innovative rehabilitation technology and rehabilitation engineering advances can be used to help individuals with disabilities meet and eliminate the barriers they face in employment. The purpose of this priority is to solicit applications that will demonstrate models to facilitate the use and delivery of rehabilitation technology and rehabilitation engineering services to individuals with disabilities to enhance their employability. Projects proposed under this priority must take into consideration activities conducted by the Rehabilitation Engineering Centers (RECs) supported by the National Institute on Disability and Rehabilitation Research (NIDRR), if appropriate. It is intended that projects will be complementary to, rather than duplicative of, research activities being conducted by the RECs. The project must demonstrate a model approach to developing and implementing one of the following: (1) A local community-based model system of rehabilitation technology information exchange to improve the delivery of rehabilitation services; (2) a local community-based model system of rehabilitation technology service delivery for rural or underserved populations; (3) a local community-based model to provide long-term technology assistance, such as the use of volunteer and peer networks to assist in the repair and maintenance of devices, updating and improvement of devices, or redesign of technological devices to meet new or emerging needs of individuals with disabilities; (4) a model to increase the availability of reliable and durable assistive technology devices that address unique, low-market demand, or complex technology-related needs of individuals with disabilities; (5) a model to assist in the transfer of technology that is not specifically designed for individuals with disabilities to uses appropriate for these individuals, such as automotive equipment and adaptive devices, use of small appliances, and use of luxury items; (6) a model to assess the satisfaction of consumers of assistive devices in areas such as access to information, availability of needed services, timeliness of provision of services, repairs, training in the care of the devices, and ways to use consumer feedback to improve the rehabilitation process; or (7) a model to coordinate available financial resources, especially local resources, to create financing systems for the delivery of rehabilitation technology services.

Each application must respond to only one of the described priority areas. A separate competition will be conducted for each priority area.

Priority 2—Innovative Strategies to Promote Vocational and Independent Living Outcomes

The use of innovative strategies to promote vocational and independent living outcomes could significantly improve the ability of individuals with disabilities to eliminate barriers they face in the community and increase their control over decisions concerning their daily living choices, including vocational options, and facilitate their integration into the community.

The proposed demonstration project must be designed to promote vocational and independent living outcomes for individuals with severe disabilities. The project must use mechanisms such as peer counseling, job clubs, consumer networks, job coaches, and community-based instruction to assist individuals with severe disabilities to use typical social networks (for example, friends, family, neighbors, co-workers, professional associations, and community organizations), i.e., social networks that are used routinely by individuals without disabilities to achieve vocational and other goals.

For this competition only, the Secretary will review applications under this priority in accordance with the selection criteria in §§ 369.31 and 373.30, with the following exceptions and amendments. The criteria in § 373.30(f) (service comprehensiveness) and § 373.30(g) (relevance to the State-Federal rehabilitation service program) will not apply to this competition. The criterion in § 369.31(a) (plan of operation) will apply, but with a new paragraph (a)(2)(vi) reading as follows: "A plan for the involvement of individuals with disabilities in the planning and implementation of the project." The points assigned to this criterion will be increased to 25 points. The criterion in § 369.31(d) (evaluation plan) will apply, but with a new paragraph (d)(1)(3) reading as follows: "The Secretary looks for information that shows that the applicant will generate data that demonstrates the impact of the project on the vocational and independent living outcomes of the individuals served.", and the points assigned to this criterion will be increased to 15 points. Also, the points assigned to the criterion (innovativeness of approach) will be increased to 20 points.

(Approved by the Office of Management and Budget under control number 1820-0018)

Authority: 29 U.S.C. 777a(a)(1).

Dated: June 12, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.128A, Rehabilitation Services Administration)

[FR Doc. 89-15534 Filed 6-28-89; 10:38 am]

BILLING CODE 4000-01-M

[CFDA No. 84.128A]

Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1989

Purpose of Program: This program provides support to State and other public and nonprofit agencies and organizations to expand or otherwise improve rehabilitation services for individuals with severe handicaps.

Deadline for Transmittal of Applications: August 7, 1989.

Applications Available: July 3, 1989.

Estimated Total Available Funds: $2,500,000.

Awards are to be made in two priority categories and one nonpriority category. Specific information regarding estimated funds and awards appears in the chart in this notice.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, and 85; and (b) The regulations for this program in 34 CFR Parts 369 and 373.

The priorities in the notice of final priorities for this program, as published in this issue of the **Federal Register** also apply.

For Applications or Information Contact: Mary Ford, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3332 (Switzer Building), Washington, DC 20202–2650. Telephone: (202) 732–1351.

Program Authority: 29 U.S.C. 777a(a)(1).

Dated: June 27, 1989.

Patricia McGill Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

Category	Estimated available funds	Estimated size of awards	Estimated No. of awards
Priority 1— Rehabilitation technology services	$900,000	$150,000	6
Priority 2— Innovative strategies to promote vocational and independent living outcomes	700,000	100,000	7
Non-priority	900,000	100,000	9

[FR Doc. 89–15535 Filed 6–28–89; 8:45 am]

BILLING CODE 4000–01–M

federal register

Monday
July 3, 1989

Part III

Environmental Protection Agency

Endangered Species Protection Program; Notice of Proposed Program

ENVIRONMENTAL PROTECTION AGENCY

[OPP—36168; FRL 3611-11]

Endangered Species Protection Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed program.

SUMMARY: This Notice summarizes EPA's revised proposed Endangered Species Protection Program (Program). The Program includes a new approach to biological consultation and a revised implementation plan, including a voluntary Interim Program. This Notice also provides background information regarding EPA's development of the Program since 1987.

DATE: Comments in response to this Notice must be received on or before October 2, 1989.

ADDRESSES: Written comments identified by the document control number OPP–36168 should be submitted in triplicate to: Public Docket and Freedom of Information Section, Field Operations Division (H7506–C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail:

Larry Turner, Ecological Effects Branch, Environmental Fate and Effects Division (H7507–C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 815, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1007).

SUPPLEMENTARY INFORMATION: This Notice is organized into several units. Unit I is the introduction, which provides information on legal authority, the consultation process, and the initial development of the Endangered Species Protection Program, as well as a summary of the **Federal Register** (FR) Notice published on March 9, 1988. That FR Notice described EPA's proposed Program and solicited public comments on a number of issues related to the Endangered Species Protection Program. Unit II provides a summary of the development of the Program since January 1988 and includes the role of EPA, the states, and other agencies, particularly the U.S. Department of Agriculture (USDA) and U.S. Fish and Wildlife Service (FWS) of the Department of the Interior. Unit II also provides a summary of the role of the Interagency Task Groups that have been formed to assist EPA in developing the Endangered Species Protection Program, as well as a summary of their primary tasks. The revised proposed Program is summarized in Unit III, including the new approach to biological consultation and a revised implementation plan. Exemptions from the Program and information regarding public health emergencies and enforcement of the Program are provided in this Unit as well. Unit IV contains an analysis of public comments, and Unit V provides a summary of the voluntary Interim Program, which includes pilot programs and education and outreach efforts. Unit VI provides additional technical background information, and Unit VII discusses information related to the public record and solicitation of public comments. Finally, Unit VIII provides the references cited throughout the Notice. Each Unit, as appropriate, includes information regarding the role of the public in various aspects of the proposed Program.

I. Background

A. Legal Authority

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 135 *et seq.*) governs the regulation of pesticides in the United States. Under FIFRA, a pesticide product may be sold or distributed in the United States only if it is registered or exempted from registration by EPA. Before a product can be registered unconditionally, it must be shown that the pesticide can be used without "unreasonable adverse effect on the environment" (FIFRA section 3(c)(5)), that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2(bb)), when used in accordance with label directions.

Congress passed the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), to provide protection for animal and plant species that are threatened or endangered of becoming extinct and to conserve the ecosystems upon which they depend. (Such threatened or endangered species are referred to as listed species in this document.) The ESA institutes certain prohibitions against the "taking" of listed species of plants and animals.

Section 7 of the ESA (15 U.S.C. 1536) requires all Federal agencies to ensure that any action authorized, funded or carried out by the agency will not be likely to jeopardize the continued existence of a listed species or to result in the destruction or adverse modification of the critical habitat of a listed species. This duty extends to licensing activities, such as the registration of pesticides by EPA. In other words, EPA in registering pesticides must ensure that its actions do not harm listed species.

The FWS is the Federal agency responsible for administering the ESA for most species. However, the National Marine Fisheries Service (NMFS) of the Department of Commerce also administers the ESA and is responsible for protecting listed marine species. USDA's Animal, Plant and Health Inspection Service has some enforcement responsibility for the import/export of terrestrial plants under ESA and under the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

In 1988, both FIFRA and ESA were amended. The amendments to FIFRA do not contain any explicit references to EPA's Endangered Species Protection Program. However, the ESA amendments (Pub. L. 100–478; 102 U.S.C. 2306) directly address EPA and its activities affecting pesticides. The ESA amendments require that EPA work jointly with USDA and the U.S. Department of the Interior to identify appropriate alternatives for implementing a labeling program to protect listed species from pesticides, while allowing agricultural food and fiber commodity production to continue. The ESA amendments require EPA to investigate the best available methods to develop maps, alternatives to mapping, and to identify alternatives to prohibitions on pesticide use. The ESA Amendments also require EPA to inform and educate fully those engaged in agricultural production of the elements of any proposed pesticide labeling program and to provide an opportunity to comment on the elements of such a program.

B. ESA Consultation Process

Briefly, the consultation process under ESA begins when a Federal agency makes a determination that its authorized or funded action, in EPA's case registration and reregistration of pesticides, may affect a listed species or its critical habitat ("may affect" determination) and requests a Biological Opinion from FWS. To comply with EPA's responsibilities under section 7 of ESA, EPA conducts an assessment of the potential effects of pesticides on listed species. If EPA determines that a

particular pesticide use "may affect" a listed species, EPA initiates a formal consultation under section 7 of ESA. Generally, these consultations have been with FWS because most pesticide uses do not affect listed species under NMFS jurisdiction, such as whales, seals, and other marine animals.

In response to an agency's "may affect" determination, FWS develops a Biological Opinion on that action. A Biological Opinion regarding a pesticide indicates whether the use of the pesticide in question is likely to jeopardize the continued existence of a listed species or destroy or adversely impact a listed species' critical habitat. The Biological Opinion may contain reasonable and prudent alternatives and measures. Reasonable and prudent alternatives are actions which (1) the consulting agency is capable of implementing under its authority and jurisdiction, (2) are economically and technologically feasible, and (3) could avoid the likelihood of jeopardy to listed species or avoid the destruction or adverse modification of critical habitat.

In addition, the FWS may include reasonable and prudent measures if an incidental take statement is provided in the Biological Opinion. (Incidental take is the inadvertent killing, harming, or removal of federally listed species that results from carrying out an otherwise lawful activity, such as the use of a pesticide in accordance with label directions.) If incidental take is specified, reasonable and prudent measures will be provided to reduce the likelihood of incidental take. Incidental take and the associated reasonable and prudent measures may be specified for species regardless of whether or not FWS has declared jeopardy for the species.

If the Federal agency cannot comply with the Biological Opinion, it may apply for an exemption under ESA to be considered by the Endangered Species Committee which is composed of the Secretaries of Agriculture, Army, and the Interior; Administrators of EPA and the National Oceanic and Atmospheric Administration; the Chairman of the Council of Economic Advisors; and representatives from each affected state who are appointed by the President of the United States, as appropriate. Regulations governing section 7 consultation procedures are described in 50 CFR Part 402. Unit VI.A. provides a summary of the procedures for complying with section 7 consultation requirements.

C. Initial Development of the Endangered Species Protection Program

The EPA began developing the Endangered Species Protection Program in 1982 because the approach that EPA had been using to comply with the ESA had been criticized as inadequate. The EPA's consultations were conducted only on individual registration actions that were submitted to EPA, which resulted in a case-by-case approach. This approach was slow and generally did not consider older and often more toxic pesticides. Since newer pesticides were being reviewed routinely as part of the registration process, newer pesticides were more likely to be referred to FWS than older pesticides. This resulted in inadequate protection for listed species. Also, the case-by-case approach resulted in market inequity among registrants of different pesticides for the same uses.

Consequently, EPA in cooperation with FWS developed the "cluster" approach to requesting consultations, in which all pesticides registered for the same use pattern were addressed at the same time. Each pesticide in a cluster was evaluated independently for its toxicity and expected exposure to listed species. The individual evaluations were grouped together and referred to FWS for consultation as a cluster. The purpose of this approach was to accelerate the review of a larger number of pesticides that could affect listed species, to treat new and old pesticides consistently, and to eliminate market inequities by reviewing pesticides with similar uses as one group.

After EPA received Biological Opinions for certain pesticides included in the initial cluster consultations, EPA intended to implement the reasonable and prudent alternatives identified by FWS for these pesticides by using pesticide product labeling and county-specific Pesticide Use Bulletins for Protection of Endangered Species (Bulletins). The Bulletins would contain habitat maps and would describe pesticide use limitations within the habitat of listed species. However, EPA encountered difficulties in acquiring accurate maps and map information and also received many comments from other Federal agencies, states, and users regarding the overall approach. Criticism about the lack of public involvement also was raised. The EPA concluded that more time was required to develop the Endangered Species Protection Program and that public comment on the proposed Program was needed. The EPA issued a FR Notice on March 9, 1988, (53 FR 7716) which described EPA's proposed Program and requested comment. The EPA also held public meetings across the country to obtain additional comments.

D. Summary of the March 9, 1988, FR Notice

On March 9, 1988, EPA issued a FR Notice (53 FR 7716) requesting public comment on the Endangered Species Protection Program described in that Notice, as well as on alternative approaches that would protect listed species from jeopardy resulting from the use of pesticides. The proposed Endangered Species Protection Program described in the March 9, 1988, FR Notice, which is superseded by the revised proposed Endangered Species Protection Program set forth in this Notice, is discussed in the Units I.D.1. through 6.

1. *Cluster approach.* The EPA originally proposed an Endangered Species Protection Program based on the cluster approach to consultations, as opposed to the case-by-case approach that had been previously used. The EPA proposed to evaluate all pesticides registered for a particular use and to refer at one time to FWS for a Biological Opinion, those for which a "may affect" determination was made.

The EPA had completed reviews and received Biological Opinions for clusters encompassing pesticides used on selected crops (corn, soybeans, cotton, sorghum, oats, barley, wheat and rye); in forests; as mosquito larvicides; and on rangeland or pasture land. Under this approach, additional use patterns would have been evaluated until all pesticide/listed species combinations were addressed.

2. *Exemptions.* The proposed Program would have exempted home and garden uses and certain forestry uses. The FR Notice also indicated that under ESA, pests identified by the Department of the Interior to present an overriding risk to man would not be eligible for listing under the ESA.

3. *Labeling/bulletins.* The EPA's proposed Program relied on the labeling of affected pesticides to instruct users that they must comply with the limitations on use, as identified in the Bulletins. In May 1987, EPA issued Pesticide Registration (PR) Notices 87–4 and 87–5, which indicated that in order to remain in compliance with FIFRA, all registrants of pesticide products identified in the clusters as causing jeopardy to listed species must modify their product labeling to provide pesticide users with the information necessary to protect listed species.

Specifically, labels would list the counties in which use limitations

applied and would refer users to the Bulletins for the county in which the product was to be used, or labels would provide the user with a FWS telephone number to obtain further information. The Bulletins also would contain a map of the county identifying the area in which there were pesticide use limitations to protect listed species.

4. *State-initiated plans.* In October 1987, EPA invited states to develop alternative plans to protect listed species. These plans could include changes in pesticide application rates, timing, methods, or any other measures that would protect listed species and would be subject to the approval of both EPA and FWS. These state-initiated plans would provide EPA with recommendations to achieve compliance with the ESA in the state and would reduce the potential adverse impact on the user community within that state.

5. *Program deferral.* When PR Notices 87–4 and 87–5 were issued, EPA intended that the labeling approach would take effect in the 1988 growing season. However, it became clear that implementation of the Endangered Species Protection Program would be far more complex and time-consuming than originally anticipated. Public response to the draft maps and to the proposed Program in general indicated a number of significant concerns, such as map inaccuracies, the need for more public review and comment on the Program, the necessity for additional education and training programs, and others. Also, the development of state-initiated plans would require coordination and cooperation among several groups, which would take time. Therefore, EPA announced on January 7, 1988, that it was deferring implementation of the Endangered Species Protection Program for the 1988 growing season. For registrants, EPA issued PR Notice 88–1 on January 26, 1988, which rescinded PR Notices 87–4 and 87–5.

Deferral of the Program was in keeping with Congressional action. In passing the 1988 Continuing Appropriations Bill, Congress blocked expenditures prior to September 15, 1988, of EPA funds to implement or to enforce the Endangered Species Protection Program.

6. *Request for public comment.* In the FR Notice (53 FR 7718) EPA invited public comment on any aspect of the Program and invited participation in public meetings to be held across the country. The FR Notice identified several major areas on which comments were of particular interest. These areas included identifying alternatives to use prohibitions to preclude jeopardy to listed species; evaluating the appropriateness of an approach based on clusters, maps, and product labels; assuring consistency between pesticide-specific and use-cluster Biological Opinions that declared jeopardy; maintaining consistency with other Federal programs involved with pesticide use; providing assistance to non-traditional user groups; and providing guidelines or minimum requirements for state-initiated plans recommending alternative measures.

II. Development of the Program Since January 1988

A. The Role of EPA

Since deferral of the Endangered Species Protection Program, the Office of Pesticide Programs (OPP) within EPA has continued work to identify listed species that may be harmed by pesticide use and to develop the Program. As part of this effort, EPA has reviewed the public comments and considered them in revising the Program. To ensure that the maps describing the habitat of listed species are accurate and reflect currently occupied habitat, EPA has been working closely with other Federal agencies and the states in revising the maps. To assist in developing the Program, EPA has formed Interagency Task Groups with USDA and FWS. The EPA also has continued to consult with FWS on pesticide registrations and reregistration actions. To date, EPA has submitted over 65 pesticide/use specific (case-by-case) consultation requests, along with consultation requests on groups of pesticides registered for use on corn, cotton, soybeans, sorghum, wheat, oats, barley, rye, forests, rangeland, noncropland, and as aquatic herbicides and mosquito larvicides.

The EPA's Regional Offices serve as lead liaisons to states developing state-initiated plans and have been working very closely with these and other states, as well as the Indian Tribes.

In addition, Regional Offices will be working with the Commonwealths of Puerto Rico and the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Federated States of Micronesia, and the Republics of the Marshall Islands and of Palau. These areas were not originally included in the Program because the cluster consultations did not reveal any listed species that were jeopardized from the use of pesticides in these areas. However, recent Biological Opinions have included listed species in some of these areas. The EPA will therefore develop the appropriate maps and Bulletins and will invite development of plans to protect listed species.

Other Regional Office activities include holding public meetings and being involved in coordination of map reviews and outreach efforts. Regional Offices also have been involved by providing input and reviewing various aspects of the Program. In addition, the Regional Offices have been identifying the states which will participate in pilot programs described in Unit V of this document and will be involved with the evaluation of these pilot programs.

The EPA is preparing to do an economic impact analysis with the assistance of USDA and FWS. In developing this analysis, EPA is gathering pesticide usage and crop location data, as well as information on the location of the habitats of listed species, to develop several case studies. Since the proposed Program is intended to protect listed species and still be responsive to the needs of pesticide users, EPA is trying to develop a program that will not place unnecessary burden on pesticide users. (Refer to Unit II.D.3. for additional information.)

In addition, EPA will also quantify the cost to society by estimating the impacts to pesticide registrants and pesticide users regarding implementation of a generic versus county-specific labeling approach and also will qualitatively examine the effectiveness of these approaches. (Refer to Units III.B.1. and VII.B.1. for additional information.)

The EPA will continue to work to protect listed species while at the same time completing the case study analyses and the analysis of the generic versus county-specific labeling approaches. These analyses will be considered in developing the final Endangered Species Protection Program.

B. The Role of the States

State involvement also has been an important aspect of the Program because each state has its own unique situation and concerns regarding listed species. The extent to which each state is involved is a decision made by that state. Some states are developing state-initiated plans and are investigating the development of alternative practices that would provide protection for listed species, while still allowing the use of certain pesticides. Still others are developing education and training programs specific to the needs of protecting listed species in their state. Additionally, state-initiated plans may suggest additional local factors that EPA can consider in making "may affect" determinations. Through the use of such factors, EPA may be able to further narrow the scope of pesticide use limitations for agricultural, commercial,

and home and garden pesticides while continuing to protect listed species. The guiding principle for all state efforts will be to eliminate impacts on listed species so that EPA pesticide registration activities do not harm the species.

Many states have proposed or are proposing revisions to the maps of listed species habitats by more accurately describing the currently-occupied habitat of the affected species. The EPA will rely as much as possible on the revised maps submitted by the states, although the final maps ultimately will be subject to the approval of FWS. The EPA and FWS also are working on refining the maps for all states. In all cases, states will be provided the opportunity to review the maps before they become final.

C. Interagency Cooperation

On November 5, 1987, an informational briefing was held before the U.S. House of Representatives' Committee on Agriculture. During this briefing, the three Federal agencies most directly involved in issues related to listed species and pesticide use agreed to form a senior level policy committee for oversight and to ensure consistency among the Federal agencies in designing and implementing an effective program that considers the various needs of species, agricultural users of pesticides, public health, and environmental safety.

The USDA, FWS, and EPA instituted this committee which is composed of Assistant Secretaries and Deputy Assistant Secretaries of the USDA, the Director of FWS, the EPA Assistant Administrator for Pesticides and Toxic Substances, and the EPA Deputy Director of OPP.

This interagency committee has met periodically since 1987 to discuss policy concerns and to give senior management direction and concurrence as the Endangered Species Protection Program was designed and developed. This policy committee will continue to meet as needed and will continue to ensure broad consistency and support for the Program throughout the Federal agencies that are most closely associated with the issue.

D. Interagency Task Groups

Three Interagency Task Groups were formed to assist EPA in developing the Endangered Species Protection Program. These groups involve EPA, FWS, and USDA. Each agency participates to varying degrees, depending on the task. Although EPA has the overall lead in developing and implementing the Endangered Species Protection Program, other Interagency Task Group members may have the lead on developing certain types of information or may perform assistance and review functions. The primary tasks for these groups are to provide assistance and support in the technical aspects, outreach and education efforts, and analyses of impacts and alternatives of the Endangered Species Protection Program.

1. *Technical Task Group.* The Interagency Technical Task Group was established to provide assistance and support in the planning and implementation of the technical aspects of the Endangered Species Protection Program. Current and planned efforts of the group include improving interagency involvement during the consultation process, facilitating information exchange, providing technical recommendations, suggesting areas for new research, ensuring adequate review of Bulletin information for various species, and working to improve the processes involved in map review. The Technical Task Group also is assisting in establishing criteria for setting priorities for species potentially affected by pesticides to help focus efforts of the Program.

Other important tasks of this group include collection and review of data needed to ascertain and to quantify the differences in risk associated with different areas of the country, application methodologies, techniques, and alternatives. The Technical Task Group is reviewing educational materials for technical/biological accuracy and will assist in collecting the data necessary to improve modeling efforts as data needs are identified.

The Technical Task Group may be called upon to review or to ensure adequate review of potential use limitations, risk reduction measures, incidental take statements, and reasonable and prudent actions.

2. *Outreach and Education Task Group.* The EPA has established an Interagency Outreach and Education Task Group to help address issues of education and outreach. This group performs three primary functions including (i) identifying educational needs and the mechanisms to address those needs, (ii) developing specific materials for the public, and (iii) reviewing educational materials and outreach processes.

a. *Identification of educational needs and the mechanisms to address those needs.* Key areas in which a need for educational materials have been identified include:

(i) The requirements of the ESA regarding pesticide registration.

(ii) The EPA's process to determine whether a pesticide use "may affect" a listed species.

(iii) Specific information regarding the Endangered Species Protection Program, its potential implications for pesticide use limitations, and identification of opportunities for public participation in Program development and implementation.

(iv) The availability of alternative pesticides, methods of use, and non-pesticidal pest control methods.

The Outreach and Education Task Group also has considered mechanisms which might be utilized to disseminate information or ensure its availability to the public. The FWS and EPA Regional Offices have existing outreach and education mechanisms and may be called upon to assist in these efforts. In addition, the Soil Conservation Service (SCS) and the Cooperative Extension Service have field personnel in nearly every county in the country. The EPA will explore further the possibility of using these networks to establish distribution points for information. Pesticide manufacturers, distributors, pesticide dealers, trade associations, and possibly direct mail to some areas have been identified as other possible means to distribute information.

b. *Development of specific materials for the public.* Two specific pieces of information already are being developed by the Outreach and Education Task Group to support the Endangered Species Protection Program. First, a brochure is being developed which will describe the applicable provisions of ESA, its relationship to FIFRA, and the process through which EPA and FWS work to determine whether a pesticide use will harm a listed species. The FWS has taken the lead responsibility for drafting this brochure; EPA will contribute information regarding its responsibilities under FIFRA and ESA. The resulting document will address these topics and other questions identified by pesticide users regarding the Program.

Second, this Task Group is developing species fact sheets. Each sheet will describe a particular species, its habitat needs, viability, number of populations, and other factors. The EPA anticipates that efforts to protect listed species from harm will be enhanced by a better understanding of the species requiring protection.

c. *Review of educational materials and outreach processes.* The Outreach and Education Task Group will review educational and outreach materials for content and form to ensure the widest possible acceptance of the information and to aid in the understanding of EPA's Program. For example, information in the form of printed and audio-visual

materials on the Endangered Species Protection Program in general are planned. There are also plans to distribute information on alternatives which will not impact listed species when that information is available.

3. *Impacts and Alternatives Task Group.* The Impacts and Alternatives Task Group will investigate the economic costs to various segments of the population affected by the Endangered Species Protection Program. The goal of this analysis is to develop a program that considers economic impacts, but still provides protection to listed species.

The analysis of program impacts will be based on several case studies, which will be used to estimate a range of economic effects. These case studies are based on the results of the existing Biological Opinions and the pesticide use limitations that were to have gone into effect in 1988 and will be conducted for field crop, fruit and vegetable crop, forestry, and public health uses.

The use sites and their locations proposed for the case studies will be chosen because they represent a significant overlap of listed species and pesticide use areas, are likely to have the least number of alternatives available, and have a high concentration of minor use crops. As a result, these sites and/or geographical areas are expected to represent locations where the magnitude of economic impacts are likely to be greater than other areas. As a result, the EPA believes that this approach will overstate economic impacts by providing a range of conservative estimates.

The complexity of the Endangered Species Protection Program and the breadth of its coverage make a conventional approach to the analysis of impacts and alternatives difficult and costly. Data on pesticide usage, information on alternative cropping systems and other relevant facts vary greatly in availability and quality. Species-specific details for cropping practices, pesticide use practices, pest problems, availability and suitability of alternative pesticide(s), and other factors often are not available or are not available in a form suitable for economic analysis. As a result, a variety of approaches to the analysis will be used in addition to the case studies such as qualitative estimates, general overviews, and rigorous economic analyses where data permit.

To the extent that data are available, the Impacts and Alternatives Task Group will also investigate possible alternatives to use limitations, such as the timing of application and other pest control practices that may be employed within the habitats of listed species.

III. The EPA's Revised Endangered Species Protection Program

The EPA developed the new Endangered Species Protection Program to fulfill two primary objectives. The first objective is to achieve the best protection for listed species. The second objective is to be responsive to the needs of agricultural production in this country by developing a program that can be readily implemented without unnecessary burden on pesticide users. The EPA hopes to accomplish both objectives through the new Program and a new approach to biological consultation.

Conceptually, the new approach to biological consultation is a species-based approach. The EPA believes that the goal of protecting listed species from pesticides can best be achieved by focusing on the listed species themselves, rather than on clusters of pesticide use sites, as had previously been proposed. It should be noted that the majority of comments on EPA's previously proposed Program favored a species-based approach, and many variations were suggested. The EPA has developed a species-based approach that is responsive to its legal obligations under ESA and that meets both its objectives. (See Unit IV of this document for a discussion of other approaches that were considered.)

The EPA believes that its second objective, reducing the burden on pesticide users, can be met through the use of a threshold application rate approach and consideration of different exposures resulting from various application methods in determining whether a pesticide "may affect" listed species, as well as through refined maps. The EPA will determine the threshold (lowest) application rate on the product label that "may affect" listed species. This approach will be used to evaluate all uses of a pesticide. Consultation with the FWS will be limited only to the specific application rates that "may affect" a listed species. Thus, application rates below the threshold application rate will not be part of the consultation request.

Achieving the objectives that EPA has set out will depend on the active participation of an informed public and the rigorous application of sound scientific methods throughout the consultation process. Sound science is needed in reviewing pesticides and their potential impacts, determining the location of listed species, and devising workable use limitations and alternatives. The EPA is firmly committed to developing a program that is grounded in good science. The EPA also intends to build its Program through an open and participatory process that encourages the involvement of the states, counties, agricultural community, environmental groups, and the many individuals and organizations concerned about this issue.

Unit III.A. summarizes the new species-based approach and is followed by an explanation of how the approach will be phased-in for species covered by existing Biological Opinions, as well as other listed species. Unit III.B. describes the implementation of the new approach through labeling and Bulletins.

A. New Approach to Biological Consultation

1. *Conceptual approach.* Under the new approach, EPA will begin its efforts with the most vulnerable of the listed species, which are those with the greatest need of protection. The species will be ranked based on their status, vulnerability to pesticides, and other pertinent factors. With the assistance of FWS, EPA will then identify the counties in which each of the ranked species is currently located. The next step will be to determine the agricultural crops and other pesticide use sites that are in the county.

Then EPA will identify the pesticides registered for use on these sites. For each pesticide so identified, EPA will evaluate all uses to determine those that "may affect" listed species and will then request a consultation from FWS for those pesticide uses which result in a "may affect" determination. Although pesticides will be selected for evaluation on the basis of vulnerable species, EPA requests a consultation as a result of pesticide registration for specific uses. Therefore, FWS may include all species that could be impacted by pesticides referred to FWS.

Subsequent consultations will focus on the next group of vulnerable species and associated pesticides until all species and pesticides have been considered. After this point, consultation will occur on a case-by-case basis depending on receipt of new information, registration applications, or listing of new species.

a. *"May affect" determinations.* Under the original cluster approach, EPA based its "may affect" determination for a particular use of a pesticide on the highest registered application rate for that use. If EPA concluded that the highest application rate resulted in a "may affect" determination, EPA requested a consultation from FWS for that use. If the FWS found jeopardy, all

products containing that pesticide for that use were subject to the use limitations to prevent jeopardy.

Under the new approach, EPA will use the highest application rate on the label only as a screening mechanism. If the screening step indicates a "may affect" situation, the pesticide will be evaluated further to determine the threshold or lowest application rate that "may affect" listed species. (See Unit VI.B. of this document for a detailed discussion of the "may affect" determination process, and Unit VI.C. for information on the procedure used to calculate the threshold application rate.) Consultation with FWS will be limited only to the specific application rates and uses that "may affect" listed species.

In developing "may affect" determinations, EPA will take into account, to the extent data are available, other aspects of exposure such as application methods, timing, and species biology. These factors, coupled with the use of more precise models than were available in the past, will serve to provide FWS with better information on which to base Biological Opinions.

In conducting its evaluation, EPA will use available validated toxicity data and information on potential exposure. Where appropriate and available, EPA will include data that are site-specific to a species' location. If EPA finds a need to reevaluate a "may affect" determination, EPA will use any other available new data and new scientific methodology, such as refined models.

Once the threshold application rate for a pesticide is established, EPA will determine if any known measures could alter the "may affect" determination or reduce exposure. This information will be given to FWS when EPA requests consultation or reinitiates consultation on existing Opinions. If the threshold application rate is lower than any registered application rates, EPA will conclude that all of the registered application rates will result in a "may affect" determination.

Most commonly, pesticide threats to listed species will be from acute toxicity from direct exposure. However, "may affect" determinations may be made on the basis of secondary toxicity; cumulative, reproductive, or chronic effects; or effects on habitat or food supply. Where EPA has sufficient information, evaluations of these kinds of effects will also be based on a threshold application rate. (See Unit VI for additional information.)

b. *Public notification.* The EPA intends to provide public notification 30 days prior to initiating consultation with FWS. The EPA will identify the pesticides, use sites, and species evaluated and will summarize the "may affect" determinations. The supporting material for EPA's "may affect" determination will be available for review at OPP.

The amount of information that EPA must review and validate in making a "may affect" determination can be very extensive. At the same time, EPA needs to formally consult with FWS in a timely manner to fulfill its obligations under ESA. The EPA is committed to using the best scientific data available in making a "may affect" determination. Submission of such information to EPA early in the process will enhance EPA's ability to validate the data and use the information effectively.

In addition, if a pesticide registrant wishes to amend a registration in such a way that the pesticide would no longer affect listed species, EPA will review its preliminary "may affect" determination in light of the requested amendment. For example, a pesticide registrant may wish to eliminate a high exposure use pattern or modify the application rate to lower the potential exposure to listed species. A change in application methodology, timing of application, or type of formulation may, in some cases, reduce exposure sufficiently to preclude effects to listed species.

The EPA encourages identification of additional reasonable and prudent actions that will protect the listed species while minimizing the limitations on pesticide use. Data, information on suggested reasonable and prudent actions, and requests for amendment will be considered prior to consultation or in a later reinitiation of consultation, depending on the timeliness of the submission.

c. *Consultation.* At the conclusion of the 30-day notification period, EPA will request consultation with FWS. As part of the consultation package, EPA may propose to FWS any known measures to reduce exposure that may represent reasonable and prudent alternatives to preclude jeopardy if jeopardy is found, or otherwise reduce impacts to the species.

During the consultation process, EPA, FWS, and USDA will be working to exchange information on exposure. They will attempt to identify relationships between species and pesticide use sites, as well as modifications of use which could be used as reasonable and prudent actions. Before FWS issues its Biological Opinion, EPA may request a draft Opinion for review. During this review, EPA will focus on the proposed reasonable and prudent actions specified by FWS. If warranted, EPA will forward alternative suggestions to FWS for their consideration in developing their final Biological Opinion.

d. *Biological Opinion.* The final result of the consultation process is a Biological Opinion developed by FWS. It is important to note that not all pesticides that EPA refers to FWS through a "may affect" determination will necessarily be found by FWS to cause jeopardy to a species or result in reasonable and prudent measures to reduce incidental take. The jeopardy declaration or incidental take provision can be based on an assessment of whether a species will actually be exposed to the pesticide in question.

After EPA receives the final Biological Opinion, EPA will publish a notice of availability in the **Federal Register** and provide an opportunity for comment. Any new information resulting from these public comments may be used to reinitiate consultation, if warranted.

When the Biological Opinion is issued, FWS will provide currently-occupied habitat maps, habitat descriptions, or the information necessary for EPA to develop these. For those species that the FWS determines are subject to threats from collection, FWS will suggest reasonable and prudent actions that do not rely on mapping. The EPA will arrange for the states to review the maps and any habitat descriptions.

Upon completion of this process, EPA will make this information available to the public for their use prior to enforceable limitations being imposed. This will allow the public an opportunity to comment on the information and provide an additional opportunity for submitting suggestions for reasonable and prudent actions. Based on comments at any stage of the review process, EPA will work with FWS to resolve any problems or reinitiate consultation where appropriate.

2. *Phased process.* To carry out the new approach, EPA will proceed in several phases. First, in the "catch-up" phase EPA will reinitiate consultation to update existing Biological Opinions to incorporate newly listed species, all uses, and additional information now available on the pesticides involved. This reinitiation is a result of a request from FWS because of the need to update the Biological Opinions, to incorporate species listed since the Opinions were issued, and to provide incidental take statements.

The second phase involves additional consultations on all remaining registered pesticides. The third phase is characterized as a "maintenance"

phase, whereby EPA maintains ongoing compliance with the ESA.

a. *Existing Biological Opinions.* Using the new approach, EPA will reevaluate the "may affect" determinations and review all of the existing Biological Opinions generated from the 1982 to 1984 "cluster" consultations. Biological Opinions that resulted from registration and reregistration processes will also be included. First, EPA will identify species for which jeopardy was declared and incidental take identified, as well as the pesticides which prompted the findings. The EPA will focus initially on the most vulnerable species in identifying the pesticides that will be evaluated first. Most importantly, identified pesticides will be evaluated to include all use sites, not just those in the previously defined clusters.

Before the new approach was developed, EPA reinitiated consultation in September 1988 on a portion of the existing Biological Opinions that were generated from the 1982 to 1984 cluster consultations. This reinitiation resulted from a request from FWS. It was intended to clarify the status of certain pesticides and/or species, allow EPA to refine its "may affect" determinations, and allow FWS to review its approach to evaluating data for Biological Opinions. The EPA intends to reinitiate consultation on the remaining portions of the existing Biological Opinions. This consultation will use the new approach and include any species/pesticide combinations from the September 1988 reinitiation, as necessary.

b. *Additional consultations.* Once EPA has completed reinitiation of consultation on all of the existing Biological Opinions, EPA will begin evaluating pesticides not included in the existing Biological Opinions. Using a ranked list of vulnerable species, EPA will identify pesticide use sites that could expose the listed species to pesticides (i.e., pesticide use sites within the county in which the species is found). The EPA will evaluate the toxicity data and determine whether any uses of the selected pesticides "may affect" listed species. The EPA will then request consultation with FWS.

c. *Maintenance.* Once all registered pesticides have been evaluated using the new approach, EPA's obligations to consult under ESA will be fulfilled through an ongoing process of evaluation and referral. Registration actions for new pesticides or new uses of existing pesticides will be evaluated as they are received. Any new pesticides or new uses that exceed the "may affect" criteria will be referred to FWS for a Biological Opinion prior to granting the registration request. If new, valid information becomes available on existing pesticide registrations, EPA will re-evaluate its "may affect" determinations and reinitiate consultation when appropriate. The EPA anticipates that reinitiations on the basis of new information will occur on an annual or biannual basis. Periodically, EPA will reinitiate consultation on pesticides already included in the Program to obtain Biological Opinions for newly listed species.

3. *Conclusions.* The EPA believes that the new approach embodied in the revised proposed Endangered Species Protection Program will allow EPA to fulfill its obligations to protect listed species under ESA without unduly burdening the agricultural community and other pesticide users. The new approach avoids creating situations where some uses of a pesticide are limited while other uses, within the same geographic location, are not. By considering all uses of a pesticide at one time, the new approach will better protect listed species in the Program from nearly all threats of a pesticide, thus operating in a more integrated and equitable manner.

The new approach also allows for reasonably rapid implementation of actions specified in the existing Biological Opinions that EPA has received from FWS. This will facilitate EPA's efforts to fulfill its obligations under the ESA.

Finally, since threshold application rates will be used in the new approach, it may be possible to identify certain lower application rates and certain application methods that will not result in "may affect" determinations or that may not result in FWS specifying actions to protect listed species. The EPA will be using the best available information and science to assess the risks resulting from particular application rates and methods.

B. Implementation

The EPA will implement the new Endangered Species Protection Program through pesticide labeling, which will refer users to county-specific Bulletins. Several important changes are being proposed in the labeling/bulletin approach described in the March 9, 1988, FR Notice (53 FR 7716). These changes will make the new Program equally effective, but easier to implement and less burdensome to pesticide manufacturers and users. These changes include the use of a generic label statement on affected products (rather than listing all affected counties on the labeling), refining habitat maps, and identifying reasonable and prudent actions to mitigate jeopardy and anticipated incidental take.

1. *Labeling/bulletin approach.* When modifications in pesticide use are necessary to protect a listed species, the product registrant will be instructed that in order to remain in compliance with FIFRA, the product label must be modified to inform the user that the product can only be used in compliance with a county Bulletin. The labeling of affected products will not list the counties in which limitations on pesticide use apply, as had previously been proposed, nor will labeling require the user to obtain a Bulletin. Instead, the labels on affected products will require that users in all counties comply with use limitations in the Bulletin for the county in which they intend to use the pesticide. As in EPA's previously proposed Program, the Bulletins will contain a county map showing the geographic area associated with each species of concern, depending on the sensitivity of the species to other factors such as collection. The Bulletins will identify the pesticides that may harm these species and describe the use limitations necessary to protect them.

For those counties in which no limitations apply, the county Bulletin will indicate that use of the pesticide according to label directions is appropriate. These Bulletins will also provide general information regarding the protection of listed species. (Refer to Unit IV.7.a. for additional discussion.)

All Bulletins will contain an address to which a pesticide user or other interested party may direct comments, as well as suggestions for improving the information contained in the Bulletins, pertinent technical information, and suggestions for less stringent but equally protective reasonable and prudent alternatives to the use limitations. Technically valid information received by EPA may be used to reinitiate consultation with FWS.

The Bulletins will also indicate the responsibilities under the ESA of Federal agencies that handle pesticides. Federal agencies that have completed a formal consultation under section 7 of the ESA for a specific project, where that project involves use of an identified pesticide in an area on the map where use limitations exist, are required to adhere to the procedures and limitations provided by the FWS in their specific consultation. Federal agencies that have not completed a formal section 7 consultation must conform to the limitations in the Bulletin.

The EPA will make every effort to ensure that the Bulletins will be available in advance of the time that

pesticide labels are modified to refer users to the Bulletins. The Bulletins will be updated no more frequently than once per year, if needed, to add or delete limitations or to incorporate new information received from pesticide users and other interested parties.

The EPA will use many available avenues to ensure wide distribution of and easy access to the county Bulletins. Distribution mechanisms currently exist through training and certification programs within the states, through the Cooperative Extension Service, and EPA Regional Offices. The EPA will focus on these existing mechanisms for distribution of the Bulletins. However, EPA also intends to explore other avenues such as pesticide dealers and distributors, SCS field offices, and FWS regional and field offices.

The EPA intends to rely heavily on the cooperative efforts of pesticide users to protect listed species from harmful pesticides. However, it should be noted that the labeling/bulletin approach provides for the same degree of enforcement under the protective measures of FIFRA as would apply to any use information applicable to a registered product. This allows EPA to fulfill its obligations under ESA to ensure that pesticide registration will not harm listed species.

2. *Implementation timing.* The EPA anticipates that implementation of enforceable measures to protect listed species from pesticides will begin in January 1991 with the issuance of PR Notices to registrants of affected pesticide products. During 1989 and 1990, EPA will encourage voluntary measures to protect listed species. When EPA receives the results of its consultation with FWS, maps and county-specific Bulletins will be developed. Once Bulletins are developed and reviewed, EPA will issue to registrants a PR Notice that they must amend their labels. The PR Notice will indicate a specific time for products released from the manufacturer to bear the revised labeling.

These registrants include the producers of all pesticide products which resulted in Biological Opinions declaring jeopardy to a listed species or indicating the possibility of incidental take. The PR Notices will indicate that in order to remain in compliance with FIFRA, pesticide registrants must modify the labeling of products affected by the Endangered Species Protection Program. All affected products released for shipment after a specified date will be required to carry a label statement directing the user of the product to use the product only in accordance with the use limitations in the Bulletin.

A PR Notice will be issued annually, if needed, to notify pesticide registrants of additional products affected by the Program or products that have been removed from the Program. Because the label statement will be generic and counties will not be listed, registrants will not need to change their product labels whenever use limitations are extended to new counties or rescinded in currently identified counties. Label changes will be necessary only if the reasonable and prudent actions specified in a Biological Opinion are rescinded for all uses of a product. The EPA will review the county Bulletins as necessary but update them not more than once annually. In addition, EPA will rely heavily on the Federal agencies and the states for information regarding new areas of occupied habitat.

3. *State-initiated plans.* In response to state concerns, in 1987 EPA offered each affected state the opportunity to develop a state-initiated plan for protecting listed species. Such a plan would recommend measures which EPA could use to protect listed species in that state. When state-initiated plans are submitted to EPA for review and approval, EPA will consult with FWS to determine that the provisions of the plan will constitute reasonable and prudent actions to protect listed species within that state. If approved, EPA would adopt the state-initiated plan and require through the Bulletin that users comply with the requirements of the plan. State-initiated plans can be developed for all or a portion of the species affected in that state. States may submit a state-initiated plan to EPA at any time. However, once federally initiated requirements are implemented within a state, those requirements will be effective in the state until the state-initiated plan is approved and implemented.

C. Exemption

All indoor uses of pesticide products are exempt from the requirements of the Endangered Species Protection Program.

D. Public Health Emergencies

Under section 18 of FIFRA (40 CFR Part 166), a State or Federal public health agency may request that EPA grant an emergency exemption for a public health emergency or utilize the crisis provision (40 CFR 166.50), if a State or Federal agency can demonstrate that:

(1) An emergency, non-routine condition exists that requires the use of a pesticide.

(2) Effective registered pesticides or alternative practices are not available or economically or environmentally feasible.

(3) The situation will present significant risks to human health.

Public health emergencies, verified by State or Federal public health authorities, include (i) situations in which a pest outbreak poses a significant risk to human health or in which the elements for disease outbreak (i.e., virus activity, large population of disease vectors either present or pending, or others) are demonstrated to be in place and prompt action is required to avert an actual disease outbreak, and (ii) situations in which an actual disease outbreak is in progress and immediate action is essential to arrest the outbreak. In the latter case, a crisis exemption under section 18 may be appropriate, which allows a Federal or State agency to authorize the emergency use of a pesticide if its use is critical and enough time is not available for EPA to receive and complete a review of the specific public health exemption request. In either case, EPA will expedite the process through emergency consultation with FWS. Prior involvement with FWS will ensure rapid processing of the application.

As indicated, public health emergencies must be verified by State or Federal public health authorities. Where state verification capability is inadequate, section 18 applications should detail verification procedures including involvement of the Centers for Disease control (CDC). The EPA is working with the CDC and the American Mosquito Control Association to establish verification criteria and to develop a model for use by States. Public health agencies should recognize that prior to any emergency, local managers should be aware of any listed species within their jurisdiction and of the limitations imposed on pesticides which threaten those species. Requests for a public health or a crisis emergency exemption under section 18 for use of designated pesticides in the habitat of listed species should be an action of "last resort" after alternative pesticides and actions have been investigated and determined to be inadequate.

A State or Federal agency must follow the requirements under 40 CFR Part 166 when requesting a public health emergency exemption or utilizing the crisis provision. For an emergency exemption, the request must include a record of contacts with and recommendations made by the FWS office having jurisdiction in the area of concern regarding the use of alternative methods of vector control. If the crisis exemption is utilized, EPA must be

notified within 48 hours and a report submitted in accordance with 40 CFR 166.50. If a crisis exemption is to be utilized for longer than 15 days, a public health exemption must be submitted.

Generally, in accordance with the ESA, EPA does not authorize use of a pesticide under section 18 if that pesticide will jeopardize a listed species. However, during emergency circumstances, a public health exemption under section 18 may, if no practical alternative control measures are available, be sought for the use of a pesticide that was found to jeopardize listed species in the habitat of the species.

E. Enforcement

Enforcement of the use limitations that will be imposed for pesticides included in this Program to protect listed species will be carried out under two provisions of FIFRA, misbranding (FIFRA section 12(a)(1)(E)) and misuse (FIFRA section 12(a)(2)(G)). Products whose use requires limitations to protect listed species and which do not carry the necessary information on the product labeling, will be identified through routine inspections of manufacturing facilities and pesticide distributors and dealers or through information received regarding suspected misbranding. Products found to be misbranded (i.e., do not carry the required label language to protect listed species) may be subject to cancellation. In the field, pesticide misuse will be identified similarly through routine inspection and information provided regarding alleged misuse of a pesticide product. In addition, FWS could take enforcement action under the ESA against unlawful taking if a person harms a species through pesticide use or any other means, unless FWS has provided for incidental take and pesticide use is in accordance with label directions, and any required reasonable and prudent actions.

Enforcement will be carried out by the states through the existing enforcement cooperative agreements with EPA. In states that do not have primary enforcement responsibility under FIFRA, EPA will enforce the labeling and use provisions necessary to mitigate jeopardy to or reduce incidental take of listed species. As stated earlier, EPA intends to have an enforceable Program beginning in 1991. Successful education and training efforts will serve to increase understanding of, and therefore, compliance with the pesticide use limitations to protect listed species.

IV. Discussion of Public Comments on Previous Proposal

The EPA received over 600 public comments on its previously proposed Endangered Species Protection Program. These comments were made in response to the FR Notice (53 FR 7716) and the public meetings held in the spring of 1988. These comments were given great weight by EPA in developing the new Program and are summarized in the following units, which are organized by topic. EPA's response follows each topic summary.

1. *Burden of proof.* Several comments questioned who should be responsible for demonstrating that a pesticide may harm a listed species, since data are not always available to show a direct cause-and-effect relationship between a pesticide and the decline of a species. Some comments indicated that EPA should assume that a pesticide will harm a species and that the burden of proof should be placed upon the registrants or users to demonstrate that harm will not occur.

In contrast, other comments indicated that the burden of proof should be on EPA or FWS to demonstrate that the use of a particular pesticide causes a threat to a listed species before any use limitations on the pesticide are imposed. These comments asserted that EPA should assume that pesticide use will not harm a species, unless a direct cause-and-effect can be demonstrated.

Other comments indicated that the major threat to listed species is from land development and not from pesticide use. As a result, it was suggested that pesticide use not be limited at all.

Response: The EPA has sufficient information to justify taking the steps proposed in this FR Notice. Every use limitation that could be implemented under this Program would be based on both EPA's "may affect" determination and the issuance of reasonable and prudent actions by FWS. Such findings will be based on the best scientific data available.

The ESA is designed to provide protection to listed species to prevent them from becoming extinct and to their habitat to prevent adverse alteration. The EPA's responsibilities under the ESA dictate that it cannot wait to regulate a pesticide until conclusive proof of direct harm to a listed species has been compiled, submitted, and analyzed. Section 7 of the ESA is designed to prevent such harm before it occurs.

To determine potential risks to listed species, EPA conducts a risk assessment to arrive at a "may affect" determination. (Refer to Unit VI.B. of this document for additional information regarding how EPA goes about making a "may affect" determination.) Initially, EPA utilizes toxicity data from tests on surrogate species identified in the FIFRA guidelines (40 CFR Part 158). These data currently represent a wide range of animal species and are extrapolated to a variety of species that may be impacted, including those that are federally listed.

The EPA also evaluates exposure. In many cases, field data are not available to assess impacts directly, and assessments must be made based on other information, such as on product use patterns, predictions of the fate of the product in the environment, and species biology. When available, EPA uses actual validated fate data, monitoring data, and mortality reports.

Although habitat loss, including loss resulting from land development, may be the primary reason a species is federally listed, other factors also may place stress on the species and exacerbate the threats to its continued existence. For example, evidence is not available to suggest that federally listed species, in general, are more or less sensitive to toxicological characteristics of a pesticide than are non-listed species. However, listed species may not be able to respond quickly to population fluctuations caused by mortality or depression of reproductive functions because of their biology and status. Localized negative impacts on food supplies could be significant in terms of the survival and reproduction of listed species. Since the population of a listed species is generally already significantly reduced, the population is likely to be more susceptible to additional environmental stresses, in addition to habitat loss, than are non-listed species.

2. *Exemptions.* Several comments requested exemptions to the Endangered Species Protection Program's use limitations and provided comment on the exemptions identified in the FR Notice (53 FR 7717).

a. *Public health programs.* Several comments indicated that public health programs should be exempt and take precedence over the protection of listed species, even if this results in harm to the species.

One comment recommended that an annual review of vector control programs be performed and their potential effect on listed species identified. General control methods and pesticides could then be approved in advance of any public health emergency.

Response: The EPA recognizes the importance of the use of pesticides in public health emergencies where expeditious control of disease vectors such as mosquitoes and fleas is required. The EPA has been working with the CDC, American Mosquito Control Association, and others knowledgeable about vector control procedures. The EPA proposes in Unit III of this document that current FIFRA section 18 exemption procedures be the method to accommodate public health emergencies. Guidelines are under development to assist state and local public health agencies in making expedited use of this process.

Section 18 of FIFRA provides for exemption of Federal and state agencies for use of pesticides under emergency conditions. There are four types of emergency exemptions which may be authorized. The first is a specific exemption for an emergency condition to avert a significant economic loss or a significant risk to listed species, beneficial organisms, or the environment. The second is a quarantine exemption, which is an emergency condition involving the introduction or spread of a new pest to the United States. The third is a public health exemption for a situation involving a pest that will cause a significant risk to human health. For each of these three, an application for approval must be submitted to EPA in accordance with the regulations at 40 CFR Part 166. The fourth is a crisis exemption, which allows a Federal or state agency to authorize the emergency use of a pesticide for any of the previous reasons, if use is critical and there is insufficient time for EPA to receive or complete review on a specific quarantine, or public health exemption. Regulations pertinent to section 18 of FIFRA are detailed in 40 CFR Part 166.

b. *Areas less than one-half acre, private landowners, golf courses, real estate developments.* Other comments requested exemptions for areas of less than one-half acre, private landowners, golf courses, and real estate developments.

Response: The EPA's policy is to protect listed species in their currently occupied habitat. Providing exemptions for areas less than one-half acre, private landowners, golf courses, or real estate developments might expose some species to pesticides which could adversely impact listed species or their habitats. Thus, EPA could not grant such exemptions and still be in compliance with the ESA.

c. *Forestry.* Some comments indicated that the forestry exemption identified in the previous FR Notice (53 FR 7177) should not be allowed. This exemption included direct individual plant sprays and/or individual plant injection, seed beds and seed orchards (incorrectly identified in the previous FR Notice as seedbed orchards), nursery plantings, ornamental trees, and ornamental shrubs.

Other comments indicated that forest uses should be exempt, and if not, less stringent use limitations should be applied to pesticide use in forests, since pesticides are only applied on a limited basis and are applied at lower application rates in forests, as opposed to agricultural sites.

Response: The forest uses previously proposed to be exempt no longer would be exempt under the revised proposed Program. The EPA is concerned about the potential exposure to listed species from these forestry uses. Unless EPA can be assured that a particular application method or use site will result in no exposure to listed species, then EPA must decline a nationwide exemption. For example, EPA seriously considered exempting woody plant injections. However, woody plant injections could be made to colony trees of red-cockaded woodpeckers, thus destroying their habitat. EPA also previously proposed to exempt seed beds and seed orchards (53 FR 7717). Upon reconsideration, EPA recognizes that listed species could be exposed from such uses due to drift or run-off of a pesticide from such areas or as a result of the species being present during application.

EPA acknowledges that there may be only a few situations in which these forestry uses could expose listed species. Using the threshold approach, EPA may find that lower application rates may be a reasonable and prudent action that could preclude harm to a listed species. In other cases, a lack of exposure at specific forestry sites may be more appropriately handled through the county Bulletins rather than through a nationwide exemption.

The EPA is working with the USDA Forest Service through the Interagency Task Groups and is also working with other interested parties to analyze and evaluate the full range of application methodologies used in the forestry industry. If further information indicates that other methodologies will eliminate the threat to listed species, EPA will reconsider its position and take steps necessary to exempt such methodologies.

d. *Reintroduced populations.* Comments recommended that reintroduced populations of species should not be covered by the Program. A reintroduced population consists of a listed species that is being reintroduced into its former habitat in the hope that it will reestablish itself.

The question also was raised regarding when a reintroduced population would be considered to have stabilized enough to have its current habitat subject to the Program.

Response: The FWS is the agency responsible for developing species' recovery plans. Reintroducing species into its former habitat is often part of a recovery plan and can be undertaken through formal regulatory procedures (50 CFR 17.80) or less formal procedures. The FWS procedures, policies, and regulations for reintroduced species include Federal, state, and public involvement.

The EPA is obligated to protect species habitats based on the results of ESA section 7 Biological Opinions and information supplied from FWS concerning occupied habitats, which may or may not include reintroduced populations. Inclusion of these reintroduced populations for protection under the Program will be determined on a case-by-case basis, based on a Biological Opinion, the advice of FWS, and the involved state and Federal agencies in accordance with existing procedures for public involvement.

e. *Federal agencies.* Some comments indicated that Federal agencies should be exempt from the Program. Others indicated that Federal agencies should not be exempt and should be required to follow the ESA and any of EPA's identified use limitations.

Response. Federal agencies are required to adhere to the procedures and limitations provided by section 7 of ESA. As discussed in Unit III of this document, those Federal agencies that have completed a formal consultation under section 7 of ESA for a specific project involving the use of an affected pesticide where it might harm a listed species are required to adhere to the procedures and limitations provided by FWS through their specific consultation. If a Federal agency has not completed a consultation, the agency must conform to the requirements of ESA and comply with the instructions on product labels and in the appropriate Bulletins.

f. *Home and garden use.* Some comments indicated that the exemption for home and garden use, which was identified in the FR Notice (53 FR 7717), should not be allowed. Risks to listed species are not dependent on who applies the product.

Response: The EPA agrees that the factor triggering inclusion of a product in the Program must be the risk it poses to

listed species and not the person who will apply the product.

In EPA's previously proposed Program, three factors supported the household products exemption. First, EPA believed that the majority of household pesticide products with use limitations would not have actually resulted in harm to listed species. Household products often result in lower estimated environmental concentrations (EEC's) than products used in commercial settings due to a smaller area being treated and in some cases a lower percentage active ingredient in the product. Also, EPA was using the highest registered application rate of a product to determine whether the product "may affect" listed species.

Second, EPA believed that few listed species are likely to be closely associated with residential areas because of habitat modifications which are likely to result during residential development.

Finally, EPA believed that providing Bulletins to household users of pesticides would be difficult given the lack of routine contact of this user group with the Cooperative Extension Service, the major proposed route of Bulletin dissemination, and given the diversity of retailers who offer household pesticides for sale.

Upon reconsideration, EPA believes that it must eliminate the formerly proposed household product exemption to fulfill its obligations under section 7 of ESA because listed species could be exposed to pesticide exposure from household products. However, EPA proposes to exempt indoor pesticide uses where exposure to listed species does not occur.

The EPA anticipates that the limitations on the use of outdoor homeowner pesticide products will be minimal and that the number of users affected will be small. Under the revised proposed Program, EPA will consider application rates and methodologies and formulation types in its determination of whether a pesticide "may affect" listed species. Therefore, limitations would be necessary only on uses of a product which specifically have been determined to result in jeopardy to listed species or where FWS has provided specific measures to reduce incidental take. Under the previously proposed Program, the high incidence of cases where limitations would be imposed on household products that would not affect listed species would be eliminated using EPA's revised proposed "may affect" procedures.

Also, significantly more precise maps of listed species habitat and EPA's proposed use of habitat descriptions to supplement these maps would contribute to decreasing the incidence of overly broad limitations on use.

The EPA believes that the population of household pesticide users affected by the new proposed Program will be small because 5 to 10 percent of total pesticide usage in the United States is in the home and garden sector. Of that amount, the indoor pesticide market accounts for approximately 70 to 80 percent. Of those remaining household products that are used outdoors, it is predicted that a limited number will require limitations to protect listed species.

The volume of household pesticides used is small because the amount of pesticides individual members of a household purchase is generally small. However, this could still result in a potentially large number of individuals being affected.

The EPA will consider the concentration of the active ingredient in pesticide products, application rates and methods, and areas to be treated when determining the EEC that may result from use of pesticide products. The EPA will also consider the nature of the products. For example, canned ant baits and small volume pressurized aerosols such as certain insect sprays would probably result in low EEC's and thus not result in a "may affect" determination.

In all cases, EPA will determine that the product "may affect" listed species only if this EEC meets the "may affect" criteria (see Unit VI of this document) and will refer to the FWS for consultation, only those that "may affect" listed species. Further, the FWS considers the probable use locations in relation to listed species habitat, and use limitations will not be imposed unless there may be use of the pesticide near a listed species.

Given EPA's refined procedures and more explicit identification of listed species habitats, limitations on the use of a product would be required only in instances where there may be an actual threat to listed species. For these reasons, EPA believes that limitations on the use of household pesticide products to protect listed species will be minimal. However, EPA will continue to explore additional factors to further narrow the scope of use limitations while continuing to protect listed species. Additionally, states may suggest innovative approaches to reduce the burden on pesticide users, while protecting listed species, through their state-initiated plans.

Even though EPA believes it should withdraw the previously proposed household products exemption, it still believes the process of ensuring easy access to Bulletins for users of these products may be difficult. The EPA is concerned that difficulty in obtaining Bulletins will result in decreased compliance with measures intended to protect listed species. Given EPA's proposed use of generic labeling as discussed in the response to comment number 7, the issue of Bulletin availability becomes more critical. Therefore, while EPA believes it must abandon a household products exemption, it recognizes that the proposed implementation approach using a generic label statement and Bulletins may not be an effective communication tool for this subset of products. The EPA intends to explore alternative communication channels during its Interim Program in 1989 and 1990 and will determine how we may pilot different implementation approaches for household products during that same time. In addition, EPA encourages specific comments on this Notice to suggest potential alternative implementation mechanisms for household products.

3. *Economic impacts.* Many comments expressed concern about the potentially disruptive economic effects of the Endangered Species Protection Program. Some comments indicated that EPA should prepare an Environmental Impact Statement and an economic impact analysis on the Program. In contrast, others indicated that ESA did not allow for economic impact considerations.

Response: The EPA agrees that limitations on pesticide use may impose some burden on pesticide users, particularly where few or no alternative pesticides or management practices are available.

EPA is pursuing means to assess the economic impacts of the Program and is committed to reducing those impacts on the user community as much as can be achieved through continued work with FWS, USDA, user groups, and the states. The USDA, EPA, and FWS have formed the Interagency Impacts and Alternatives Task Group to assist in this effort. However, economic impacts must be considered in the context of the objective of providing protection to listed species. The EPA will continue to develop measures that both protect listed species and minimize disruption to the user community, to the maximum extent feasible.

4. *User compensation.* Comments recommended that EPA should compensate users for any losses resulting from pesticide use limitations. Comments suggested that one such

source could be through the Conservation Reserve Program.

Comments also asserted that placing limitations on pesticide use to protect listed species could be a "taking" without due process or just compensation, thereby entitling the pesticide user to claim direct financial compensation from the government.

Response: The EPA is responsible for ensuring that registered pesticides will not result in unreasonable adverse effects to the environment when used according to labeling instructions. In order to permit pesticide products to remain registered while carrying out this mandate of FIFRA, EPA must, in many cases, impose limitations on the use of a product. These limitations often include specific limitations on use. Examples include specific sites or crops that may or may not be treated with the product; limitations on planting crops for which the product is not registered, in soils having been treated with the product (rotational crop limitations); and requirements that certain products not be used when pollinating insects are actively visiting the site. The EPA believes that measures necessary to ensure that pesticide use will not harm listed species are conditions of the pesticide registration similar to those other limitations necessary for the product to remain in compliance with FIFRA. The EPA has not and does not intend to pursue compensation for pesticide users whenever a condition of the registration, necessary for a product to remain in compliance with FIFRA, limits the manner in which the product can be used.

Regarding whether imposing use limitations to protect listed species might constitute a "taking," EPA believes that the use of pesticides is not a property right. Therefore, establishing use limitations does not constitute a "taking."

5. *Local appeals.* Comments indicated a need for a process which would provide for individual requests for site-specific modifications of pesticide use limitations in those cases when the user impact would be large.

Response: The EPA believes that its revised Program is responsive to local needs in the following ways:

First, EPA is inviting public comment on all aspects of the Program, including habitat maps and whether listed species could be adequately protected by alternatives other than a pesticide use prohibition.

Second, if a state develops an approved state-initiated plan, local users and other members of the public may have an opportunity to provide information to their state lead agency regarding local conditions. Such information may be relevant to some modification of the national plan or to develop specific alternative limitations to protect a species. The state lead agency in turn may incorporate the local suggestions into the state-initiated plan. The state-initiated plan would have to be approved by EPA with FWS concurrence.

Third, local users may provide EPA with information to refine or modify a "may affect" determination. If review indicates that a "may affect" determination no longer applies, EPA can reinitiate consultation with the FWS to withdraw a finding of jeopardy. Local users may also provide suggestions on additional reasonable and prudent alternatives following the issuance of a Biological Opinion.

6. *Principal Program alternatives.* The EPA received many comments on alternatives to the Program described in the FR Notice (53 FR 7716).

a. *Approach to biological consultations.* The public comments raised very serious concerns about the proposed cluster approach for initiating consultations with the FWS and indicated a strong preference for a species-based approach, followed by a preference for an approach based on individual pesticides.

The cluster approach involved evaluating a group (cluster) of pesticides registered for the same use site, such as use in forests. The EPA would refer those pesticides in a particular cluster that exceeded the "may affect" criteria to FWS for consultation in accordance with section 7 of ESA. The clusters that would be evaluated first are those with the use patterns where the most pesticides are applied. Additional cluster consultations would continue until all pesticide use patterns that may expose listed species were covered.

The majority of the comments recommended that this approach be abandoned. Others indicated that EPA had not described the approach adequately for users to understand it.

The principal objection to the cluster approach is that a particular pesticide may be used within the same geographic location on a site not yet evaluated, such as melons, while the use of the same pesticide may not be allowed for an evaluated site, such as corn. This inequity is often referred to as the corn/melon inequity. Thus, a listed species has no protection against uses of products that have not been evaluated and would give the growers of some crops an advantage over growers of other crops.

The majority of the comments favored an approach based on species. Several versions of a species approach were suggested, all of which involved identifying pesticide uses associated with the habitats of listed species. Most commonly, the species would be protected in order of priority based on the perceived pesticide threat, status, recovery potential of the species, and other criteria. The location and habitat of priority species would be identified. Then pesticides registered for use patterns associated with the habitats occupied by those species would be determined. Consultation for priority species would be requested on all pesticides registered for those use patterns and which exceed the "may affect" criteria for priority species. Additional consultations would continue until all species are covered. Each year, the group of pesticides potentially affecting the highest priority species would be reviewed and limitations established as needed to protect the species. However, other comments raised concerns that this approach would not allow EPA to implement the existing Biological Opinions that declared jeopardy in a timely manner.

In the approach based on individual pesticides, choice of pesticides to be evaluated first would be based on their toxicity, class of chemical, sufficiency of the data base, and other criteria. Then all uses of these pesticides would be evaluated to determine if a use exceeds the "may affect" criteria. Those that exceed the "may affect" criteria would be further evaluated to determine which species may be exposed. Consultation would be requested for all uses of pesticides which exceed the "may affect" criteria. Additional pesticide consultations would continue until all pesticides requiring consultation are covered.

Most of the comments addressing this topic opposed an approach based on individual pesticides because it would be too slow to be effective and would not protect the species.

Response: Originally, EPA favored the cluster approach because EPA believed that this approach provided protection to listed species in the shortest period of time and allowed EPA to address the most significant use patterns first. At the time, EPA believed that this was the only approach of the three that would allow EPA to implement a Program which addresses all the existing Biological Opinions in a timely manner, thus fulfilling EPA's legal obligation under the ESA.

The EPA agrees, however, that this approach addresses only one use site or a limited number of use sites of a pesticide at a time, which allows the

potential exposure of a listed species to pesticide uses not included in the cluster.

In contrast to the cluster approach, a species-based approach will give priority to those species in most need of protection. This approach was the one favored by most of the comments and is therefore likely to gain user acceptance, which is necessary to the success of any program designed to protect listed species.

The individual pesticide approach does not address the listed species that may be potentially exposed to harmful pesticides that are not scheduled for review. If this approach were implemented, progress toward protecting listed species would be slow. However, this approach completely addresses all registered use sites and the associated species and could encourage the development of pesticide-specific measures to reduce the risk to listed species. Yet, this method may not allow for appropriate recommendations on pesticide alternatives because the alternative pesticide may not have been reviewed and could be equally as hazardous to the species.

Initially, EPA rejected a species approach for two major reasons. Most importantly, reinitiation of consultation on pesticides affecting only some species would result in a program that would not allow for the timely implementation of many existing reasonable and prudent actions. The EPA's legal obligations require that the Biological Opinions declaring jeopardy or specifying measures to reduce incidental take be addressed and the reasonable and prudent actions be implemented as soon as feasible. Also, EPA believed that insufficient information was available on which pesticide uses are specifically associated with the habitats of listed species.

However, after further evaluation, EPA believes that a type of species approach is the most appropriate for biological consultation and is proposing such an approach. To deal with existing Biological Opinions in a timely fashion, EPA proposes to reinitiate consultation on pesticides that could impact affected species. After this initial phase, EPA would consult on pesticides potentially affecting additional priority species. In addition, although the uses specifically associated with the habitat of the species may not be known, EPA will be identifying uses in the vicinity of the species (counties).

b. *Alternatives to prohibition of use.* Many comments indicated that use prohibitions should be considered only if no other alternative was available, which would allow some continued use of a pesticide while still protecting the species. In addition, any limitations on use should only be applied if efficacious alternatives also are provided at the same time. Alternatives could include changing application methods; reducing maximum application rates; changing application timing (hourly, daily, or seasonally); and changing product formulations. Various comments indicated that these alternatives should be developed by EPA, the Cooperative Extension Service, State wildlife agencies, local pesticide users, and/or registrants through site-specific planning efforts.

In contrast, other comments indicated that only use prohibitions are adequate to protect listed species because the loss of some members of the species may lead to extinction. The comments supporting only use prohibitions indicated a concern for a lack of practical means to enforce alternatives to use prohibitions. Comments also recommended severe penalties for gross negligence.

Response: The EPA proposes to seek alternatives to prohibitions of use whenever feasible. The EPA must evaluate the effectiveness of these alternatives to protect listed species and consider questions regarding their implementation, enforcement, efficacy, and legality. The specific ways in which EPA is investigating these alternatives are described in Units III and VI in this document.

Specifically, this proposal includes calculating threshold application rates when making "may affect" determinations, thus placing emphasis on reduced application rates in lieu of complete prohibitions of use where feasible to minimize use impacts while providing adequate protection to listed species.

The EPA intends that the public participation procedures in the Program will provide the opportunity for all interested parties to contribute to the development of these alternatives.

For example, opportunities for submitting suggestions for reasonable and prudent alternatives and measures include the public notification 30 days prior to initiating consultation with FWS, and after a Biological Opinion is issued. EPA plans to make the information contained in the Biological Opinions available to the public for comment before imposing enforceable limitations.

In addition, EPA strongly supports state-initiated plan development and encourages public comments at various stages in the process, including obtaining information related to alternatives to use prohibition. Support for state-initiated plan development will encourage the development of alternatives at the local and/or state level. The EPA intends that state-initiated plans be developed with the active participation of state wildlife and agricultural agencies, local pesticide user groups, and other state and local groups interested in the success of the Program.

The EPA also intends to work with registrants to encourage them to develop means to avoid "may affect" determinations by investigating reducing application rates, substituting application methods which reduce exposure, and others. Finally, EPA will make a special effort to work with USDA to increase the range of alternatives that may be available to users. This effort includes work done through the Interagency Task Groups.

7. *Labeling/map/bulletin implementation.* The EPA received many comments on its plans to implement the Endangered Species Protection Program through a labeling/map/bulletin approach.

a. *Labeling/bulletin approach.* Some comments indicated that labels of affected products should carry a generic statement rather than list each county in which pesticide use limitations apply. Others indicated that a generic statement regarding protection of listed species should be included on all pesticide products, whether or not they have been determined to cause jeopardy. Still others recommended alternatives to the labeling/bulletin approach in general. These alternatives are discussed in response to comment 8.

Response: Advances in science and technology and the relatively new identification of local and regional environmental concerns on which EPA is focusing attention demonstrate the need to approach some issues from a geographic perspective. The EPA has been exploring different methods of accommodating geographical or regional differences for several of its more recent initiatives and believes that the proposed labeling/bulletin approach is an innovative and effective method of conveying county-specific information to pesticide users. Within the labeling/bulletin approach, EPA currently favors a generic label statement approach, but believes the cooperation of the pesticide industry is essential to implementing such an approach.

As explained in Unit III of this Notice, the revisions and refinements in EPA's revised proposed Program are expected to reduce limitations on pesticide use from those resulting from EPA's

previously proposed Program. However, EPA does not yet possess definitive information regarding the degree to which limitations may be reduced. The number of counties in which limitations will initially apply and in how many counties use of a given product may be limited, will not be available until EPA completes its consultation with the FWS. Therefore, EPA considered information derived from its previous efforts to implement an Endangered Species Protection Program, for purposes of comparing an approach using labeling consisting of county lists with a generic label statement approach.

Under the previously proposed Program, labeling of affected products would contain a list of counties in which use limitations applied. In addition, the labeling would contain a generic statement requiring pesticide users in a listed county to obtain and comply with limitations described in the appropriate Bulletin.

Based on the Program EPA previously began to implement, users of affected pesticides in a total of 910 counties (approximately 30 percent of counties in the country) would have been required to obtain Bulletins. Of those required to obtain Bulletins, a portion would have found that no limitations on use applied at their specific application site. If the county list is deleted, leaving only the generic label statement, pesticide users of affected products would be required to obtain a Bulletin even if no limitations applied throughout the county. Based on the previous Program, limitations would not apply in approximately 70 percent of the counties.

The EPA agrees with comments that indicate the effectiveness of the Program may decline if pesticide users are inconvenienced to a great degree in attempting to comply with requirements of the Program. The EPA therefore, must weigh the consumer response that may result from adopting the generic label statement approach, against the overall Program benefits of such an approach.

The EPA believes that measures to protect listed species may be effective more readily if the generic label approach is adopted. Under such an approach, once a product is labeled, protective measures for new species in new counties can be implemented through changes in the Bulletin without waiting for further label revisions to appear on products in the marketplace. The time necessary to incorporate new counties on labeling that contains a list of counties (generally 12 months), and the time estimated for products in the marketplace to be used (generally 24 months), could result in different containers of the same product having different county lists on the labeling at the same time. The EPA believes that a certain degree of the confusion which may result in such cases would be eliminated through the use of the generic label statement approach.

In addition, the administrative difficulties to EPA and the States to modify Bulletins, issue changes to registrants to add or delete counties from labeling and to monitor and enforce the requirements to change the lists may become extreme as additional listed species are considered for inclusion in a Program involving county lists on pesticide labeling.

The EPA currently favors the generic labeling/bulletin approach because of the flexibility it provides in administering the Program and in adding or deleting counties from the Program based on changes in species habitat and status. The EPA proposes to take the following actions to mitigate some of the disadvantages of this approach. First, the generic statement would not require a pesticide user to obtain a Bulletin, but instead would require the user to comply with the limitations in the Bulletin. This modification would permit pesticide users to determine whether they need to have the information, without going out of their way to locate the Bulletin itself. For instance, a user could place a phone call to his/her pesticide retailer, the Cooperative Extension Service, or the EPA to determine whether limitations applied within the county.

Second, EPA will work with representatives of the pesticide industry during the 1989 and 1990 Interim Program period to determine an effective method of distributing Bulletins and information about which counties are affected and which are not. Unless an information distribution system is developed that minimizes the potential burden on the pesticide users in the many counties in which limitations do not apply, EPA will seriously consider listing counties on the labeling of affected products. The EPA welcomes comment on its proposal and welcomes information on potential distribution methods for Bulletins and other information.

b. *Maps.* Many comments indicated that the maps of the habitats currently occupied by listed species, intended for use in Bulletins, need to be more accurate. This would make the Program more credible to pesticide users. For example, the maps should not extend currently occupied habitats to the "nearest recognizable boundary," but only describe the area actually occupied. It was also suggested that maps should be supplemented or replaced by a description of habitats and pictures of the species and/or their habitats.

Other comments indicated that FWS should prepare the maps and descriptions of habitats and use standard buffer zones across the country, unless locally specific circumstances justify a variation. One comment requested that EPA and FWS develop a national computer-based Geographic Information System (GIS) to locate the listed species and relevant pesticide uses.

In contrast, other comments were concerned that mapping could harm some listed species by making their locations known to collectors or vandals.

Response: The EPA agrees that the maps need to be more accurate. The EPA is working closely with FWS, USDA, and the states to obtain more accurate information on the location of listed species and to ensure that the maps reflect currently occupied habitat. In all cases, each map will be reviewed by FWS, other appropriate Federal agencies, states, and other interested parties prior to use of the map in an enforceable Program.

Habitat locations will not be extended to the nearest recognizable boundaries unless no other enforceable alternative is available to identify the area in such a way that a pesticide user can determine use limitations.

The EPA will use habitat descriptions when they are available and appropriate. The EPA is working with FWS, USDA, and the states to ensure that these descriptions are understandable to the user. These descriptions will be used in lieu of or as a supplement to the habitat maps. Pictures or illustrations also may be used when available and appropriate, to more specifically identify the areas in which use limitations apply.

The FWS is utilizing standard buffer zones, when such zones are necessary. However, if circumstances dictate that a different buffer zone is necessary for protecting a species, FWS will modify their standard buffer zone to accommodate the specific circumstances.

The EPA is working in conjunction with the U.S. Geological Survey to identify specific mapping needs for EPA. These needs include a computer-based data system for geographic information. However, it is not anticipated that the additional needed data will be developed before 1990. The FWS has a computer-based information system on federally listed species which has the

capability of including and interfacing with GIS. However, availability of the system to other Federal or state agencies, as well as the long term development and support by the FWS of this system is not certain. The EPA may have to develop this information independently if funding permits.

Finally, EPA also is concerned about disclosing information on listed species which might make them vulnerable to collectors and vandals. Mapping certain species may contribute to their destruction. For species that FWS determines are vulnerable to threats from collection, FWS will suggest reasonable and prudent actions that do not rely on mapping. The EPA welcomes suggestions for alternatives for identifying areas where pesticide use limitations are necessary.

8. *Alternatives to the labeling/bulletin/map implementation approach:* The EPA received a variety of suggested alternatives related to the implementation approach described in the FR Notice (53 FR 7717).

a. *Voluntary program.* Some comments indicated that the Endangered Species Protection Program should be a voluntary program since labeling will not be effective.

Response: While EPA acknowledges the degree to which it must rely on the willing efforts of pesticide users to protect listed species from harm, EPA does not believe that its obligations under the ESA would be fulfilled through a program that relies solely on voluntary participation. The EPA has considered the various approaches and will implement a program with an enforcement component.

b. *Restricted use.* Comments recommended that pesticide products posing jeopardy to listed species should be classified as restricted use which would ensure training and certification of users of the products.

Response: The EPA does not believe that restricted use classification is an appropriate or effective means to protect listed species from harm resulting from pesticide use.

Under FIFRA section 3(d)(1)(C), EPA may classify a pesticide as restricted use if unreasonable adverse effects to the environment may result even when the product is used according to directions, cautions and warnings, or in accordance with a widespread and commonly recognized practice. The EPA has developed regulations that indicate the levels of toxicity and hazard above which the unreasonable adverse effects criteria may be met. Unless a product meets these existing regulatory and statutory criteria and guidance for classification as restricted use, EPA will not so classify a product.

Further, in cases where classification of a product as restricted use is appropriate, that classification alone would not be an effective means to protect listed species. Specific use limitations, about which Certified Applicators could be trained, would still be necessary.

However, EPA recognizes the value of training to enhance understanding of and compliance with use limitations to protect listed species. Therefore, EPA's Certification and Training Branch in OPP is working to include listed species protection among the topics about which Certified Applicators receive training.

c. *Delegation of authority to states.* Some comments indicated that states should prescribe the conditions of pesticide use. Therefore, product labels should simply refer users to the state lead agencies for further instructions.

Response: Section 7 of the ESA specifically provides that Federal agencies must ensure that the actions they authorize will not jeopardize listed species. Therefore, EPA must implement a Federal program which ensures protection for listed species. The EPA also believes, however, that states may better determine methods to afford protection to listed species within the state. Therefore, EPA has provided each state the opportunity to develop a state-initiated plan for protection of listed species and to propose that plan to EPA for adoption within the state.

d. *Preserves and easements.* Comments suggested that preserves be established on public lands to protect listed species, and pesticide use be limited only if preserves cannot be established. Other comments suggested that EPA should purchase environmental easements to protect listed species.

Response: The intent of the ESA is to conserve the species and the habitats on which they depend. Therefore, FWS policy is not to introduce species into non-historic range. Under the land acquisition provisions of ESA, priority is given to habitats already occupied by the species, since other habitats may not have the biological attributes necessary for the species to survive and recover.

Although environmental easements may provide protection, EPA's responsibilities under FIFRA and the ESA are for protection of listed species from pesticides, not from all threats. The EPA considers that the Endangered Species Protection Program proposed in this Notice is sufficient to fulfill its responsibilities under section 7 of the ESA for pesticide registration.

e. *Management plans and landowner contracts.* Some comments recommended that individual management plans and contracts with landowners should be developed.

Response: The EPA believes that this approach has merit in some cases, but would not be viable on a national basis. Some states are exploring this method of protecting listed species. If proposed to EPA as part of a state-initiated plan, EPA in consultation with the FWS will determine whether in that particular state, the management plan or landowner contract will serve as reasonable and prudent actions to protect the listed species. When a favorable determination is made, EPA would implement the plan within the state.

f. *Permit system.* Several comments suggested using a county permit system such as the one used in California.

Response: California is unique in its system of county agriculture commissioners and in requiring permits prior to pesticide use. While issuing permits in the State of California may work effectively, other states may not have the mechanisms or resources to introduce such measures. Since the Endangered Species Protection Program is a national program, EPA must ensure that its applicability is far reaching. However, if other states propose such a permitting system under a state-initiated plan, EPA in consultation with FWS will consider whether the system would be a reasonable and prudent action to protect listed species in that state.

9. *Enforcement.* Some comments recommended that FWS should conduct all enforcement actions related to the harming of listed species, while product misuse should remain with EPA. Other comments indicated that EPA should establish a strong compliance program to support the product labeling.

Still other comments indicated that applicators should be required to show records of having obtained information on the proper use of the specific pesticides subject to limitations to protect listed species. Comments also recommended that EPA should conduct a pilot program with several states to test the Program's effectiveness with users, prior to full national implementation.

Response: The EPA will not attempt to enforce against the taking of a listed species. However, FWS could take enforcement action against unlawful taking under ESA, whether harm to the species was a result of pesticide use or any other activity.

As with all labeling and use provisions, EPA will enforce the

pesticide use limitations for listed species that result from Biological Opinions and the labeling requirements to ensure that a product registration remains in compliance with FIFRA. Enforcement will be carried out by the states through existing enforcement cooperative agreements with EPA. Where such agreements do not exist, EPA will enforce these provisions.

With regard to requiring applicators to show records pertaining to information on proper use, section 11 of FIFRA prohibits EPA from issuing regulations which require the private applicator to maintain any records or file any reports or other documents.

The EPA plans to initiate three types of pilot programs, which are described in Unit V of this document. These pilots include special project pilots, state-initiated plan pilots, and Federal program pilots.

10. *Education and training.* Some comments recommended that registrants, the Cooperative Extension Service, state/Federal wildlife agencies, the FWS, and others be involved in education and training efforts. For example, FWS should provide education on ESA, including an explanation of the process through which species become listed.

Comments also recommended that the Program should provide users with 1 year of education before initiating enforceable labeling for each pesticide affected by use limitations. Other comments indicated that EPA or FWS should establish a national toll free telephone number for pesticide users to obtain species and use limitation information. This service also could be provided by electronic bulletin board.

Response: The EPA agrees that a wide variety of people should be involved in education and training efforts. For example, FWS and USDA are already involved in the Interagency Outreach and Education Task Group, which is charged with developing education and training materials for the public. This Task Group also will seek to provide opportunities for other groups to participate. In addition, EPA is working through its Certification and Training Branch to ensure that, in the future, certified applicator training will include information related to listed species protection.

While EPA agrees that training and education efforts are important for pesticide users, EPA does not see the need to provide 1 year of education before initiating enforceable labeling for each pesticide affected by use limitations. However, EPA is planning in the Interim Program for education and training in the 1989 and 1990 growing season so that users should be comfortable with the manner in which the Program operates, well before enforceable labeling is in the marketplace. The EPA believes that its training and education efforts on a national basis should provide users with the information necessary to understand the Program.

The Outreach and Education and Technical Task Groups are considering a national toll free telephone number and other electronic media to assist users, but have not made a final decision at this time.

11. *Funding.* Many comments indicated that state and local efforts should be funded by the Federal government. Such efforts could include verifying the extent of species habitats and developing alternatives to any national limitations on use.

Response: The EPA must move forward with a program to protect listed species to fulfill its obligations under ESA. The EPA is making every effort to provide the states with an opportunity to participate. However, compliance with ESA does not depend upon the availability of funding for state and local participation in the Program. Listed species must be protected in any case. Recently, EPA has been able to fund several special projects on a limited basis under a grant program administered through the FIFRA Office of Compliance Monitoring. Of the 12 special projects funded for FY'89, 5 are related to protecting listed species. Unit V provides more detail regarding these projects. In the President's 1990 budget, submitted to Congress, EPA requested $7 million for the states to use in developing programs to protect listed species, farm worker safety, and groundwater protection in the pesticides area.

12. *Guidelines for state-initiated plans.* The majority of the comments favored EPA issuing guidelines for developing state-initiated plans, but felt that they should be advisory rather than requirements. The guidelines should list state responsibilities in such areas as mapping, research, enforcement, and technical assistance. Others felt that such guidelines would hinder creativity.

Response: The EPA chose not to issue guidelines because EPA did not want to stifle creative and innovative approaches by states in addressing unique circumstances.

However, guidelines for state-initiated plans to protect listed species were developed by the Association of American Pest Control Officials, Inc. and sent to the states. These guidelines, although brief, outline procedural steps for preparing and submitting a state-initiated plan. The guidelines recommend that a plan contain several items. First, they should contain a list of sites, species, and pesticides for which the state has developed alternative protective measures that are different from those proposed by EPA. Second, they should include a brief description of the reason for each listing and the adverse impact of complete prohibition in the range of the listed species. Third, alternative protective measures should be recommended for each listed species, and fourth, an assessment of the impact of the recommended alternatives to protect listed species should be provided. Fifth, the state-initiated plan should identify the resources committed to implementing the approved alternative program. Finally, procedures for periodic review and update of the plan should be included.

The EPA intends to work with the states which are or may be developing state-initiated plans on a case-by-case basis to determine if additional guidance is needed.

13. *State-initiated plans.* Some comments objected to state-initiated plans because such plans would promote inconsistency in pesticide use limitations.

Others indicated that EPA's national limitations should be imposed until state-initiated plans are approved rather than deferring EPA's limitations during the state planning process.

Response: Once national limitations are imposed, they will continue until state-initiated plans are approved. State-initiated plans will identify means to protect species specific to the state and habitat. The EPA recognizes there may be a number of methods suitable to protect listed species. While specific limitations may vary from state to state, consistent implementation through Bulletins will help to mitigate potential confusion.

14. *Consistency with Federal/state programs.* Many comments reflected a concern that potential conflicts with other agencies and programs need to be resolved before the Endangered Species Protection Program is implemented. Specific areas identified included agricultural research and demonstration projects; bird control; boll weevil and gypsy moth control; conservation reserves; crop insurance; the Migratory Bird Treaty Act; mosquito abatement; noxious weed, rights-of-way, and rodent control; soil conservation; and surface mine reclamation.

Other comments recommended that EPA survey other Federal agencies using pesticides to ensure that they do not jeopardize listed species.

Response: The EPA does not plan to survey other Federal agencies which use pesticides. The EPA does not anticipate that many conflicts will arise because Federal agencies, including EPA, are required to adhere to the procedures and limitations provided by section 7 of ESA. As a result, an agency which has completed a formal section 7 consultation is required to follow the procedures and limitations provided by FWS in that consultation. If an agency has not completed a consultation, the agency must still conform to the requirements of ESA and comply with the instructions on product labeling and in Bulletins.

15. *Inert ingredients.* Comments recommended that EPA include inert ingredients in the "may affect" screening procedures.

Response: The EPA has identified pesticide inert ingredients that are of toxicological concern, and as a result, has requested ecological effects data on these inert ingredients. Depending on the results of these studies, EPA will request consultation as appropriate.

16. *Special Local Need Registrations and Emergency Exemptions.* Some comments indicated that EPA should only approve a Special Local Need Registration (section 24(c)) or Emergency Exemption (section 18), if no adverse impact on listed species occurs.

Response: The EPA does consider the effect of Special Local Need Registrations and Emergency Exemptions on listed species. In general, these actions must avoid exposure to listed species; if the action "may affect" listed species, EPA consults with FWS.

17. *Public participation.* Many comments concerned EPA's process for determining that a pesticide "may affect" a listed species. Comments recommended that the public should be involved in EPA's "may affect" determinations and FWS's Biological Opinions, including draft Biological Opinions. Comments also recommended that EPA's "may affect" determinations and FWS's Biological Opinions should be reviewed through a peer review process similar to that used by EPA's FIFRA Scientific Advisory Panel.

Comments indicated that states should be given the opportunity to review maps, alternative control measures, and other major decisions in the Program. Registrants, environmental groups, university staff, and USDA should also be included in the development and review of alternative measures.

Comments also recommended that hearings should be held in the local areas affected by the Program prior to its implementation, and that all affected landowners should be notified of the Program's limitations in writing. Comments suggested that EPA should create a national advisory task force to assist in developing the Program. The FWS similarly should establish advisory panels on species mapping. The FWS needs to prepare public information materials on how to list and delist a particular species.

Response: In general, EPA agrees with the need for public participation in the Endangered Species Protection Program and has identified areas throughout this document where public participation may be helpful. Specifically, Units III and V of this document describe in more detail some of the areas in which EPA is encouraging public participation.

For example, EPA intends to provide public notification of its "may affect" determinations 30 days prior to reinitiating or initiating consultation with FWS and encourages suggestions regarding reasonable and prudent actions. Also, EPA will provide opportunity for public participation on the maps and information related to the Bulletins. Through the Interagency Task Groups, EPA is trying to ensure that the appropriate people will be contacted. As soon as maps of listed species habitats are developed, all affected states will have an opportunity for additional review. Once FWS provides a Biological Opinion with information on potential use limitations, species potentially jeopardized, and reasonable and prudent actions, additional opportunity for comment will be available.

The EPA plans to include an address in the Bulletins, whether issued during the Interim Program or after the Program is final, where comments can be submitted. All comments will be considered.

The EPA does not agree that it would be appropriate to establish a peer review process for each of its "may affect" determinations. The EPA follows procedures in its "Standard Evaluation Procedure for Ecological Risk Assessment" (Ref. 1) in developing "may affect" determinations. This document has undergone peer review, including a review by the FIFRA Scientific Advisory Panel. In light of these previous peer reviews concerning criteria and processes for determining whether a pesticide use "may affect" listed species, EPA believes that additional or separate peer reviews for each individual determination are not necessary and not an appropriate use of resources, and would unduly delay implementation of the Program.

The EPA intends to have an aggressive outreach program. While EPA cannot agree to hold local hearings in each area affected by the Program prior to its implementation or to notify individually all affected landowners, the information which is critical to the success of the Program will be distributed through several important avenues as discussed elsewhere in this document. These avenues may include the EPA Regional Offices, states, information networks of USDA, and pesticide dealers and distributors.

The EPA has debated the desirability of establishing a National Task Force to assist in development of the Endangered Species Protection Program. The EPA believes that most issues appropriate for the attention of such a task force have been resolved through public comments and participation in development of the revised proposed Program by other Federal and state agencies, public interest groups, pesticide users, the regulated community and the general public. While specific details of implementation, such as distribution mechanisms for Bulletins, have not been fully resolved, EPA believes the most effective approach to these issues will be to work individually with various interests to gain their support and cooperation and to obtain their input regarding how EPA may accomplish its objectives in this area. Therefore, EPA will not establish a National Task Force for the Endangered Species Protection Program at this time.

18. *Monitoring studies.* Comments recommended that EPA should monitor or require monitoring on the ecological impacts of pesticides to verify whether they threaten listed species under actual use conditions. Expanded research on estimating actual exposure should be conducted.

Response: The EPA can require monitoring studies in specific situations. Procedures and guidelines for monitoring studies are under development for those situations in which a monitoring requirement is warranted. In addition, EPA may obtain actual exposure and ecological impact data from aquatic and terrestrial field studies for more toxic pesticides. However, such studies must be conducted where listed species that may be affected do not occur. Such monitoring or field studies would provide information for non-listed species that may be useful for assessing effects on listed species. However, it normally would be contrary to EPA to conduct such studies where listed species could be affected.

19. *Pesticide half-lives.* Comments indicated that EPA's EEC model should consider the half-lives of pesticide residues in the environment in

calculating the potential exposure to listed species.

Response: In EPA's exposure assessments, current label information is used to estimate EEC's. Where actual field data, including information on half-lives, on EEC's are available and applicable to listed species, these data are used. However, actual residue data are not usually available. The EPA is continually working to refine its models for estimating concentrations.

Since valid environmental fate data often are not available, registrants are being required to fill data gaps as part of EPA's reregistration process. The EPA will make use of the best available information to assess impacts on listed species. As new data become available, they will be incorporated into assessments.

20. *Data needs.* Comments indicated the need for expanded research in such areas as verifying habitats, evaluating probable pesticide impacts, and identifying current pesticide use patterns. Comments recommended that EPA should require monitoring and reporting of pesticide use to verify compliance with the Program.

Response: The EPA recognizes the need for more data on species habitats and locations and thus has requested assistance from USDA, FWS, states, and others to obtain such information. Similarly, through the interagency efforts, EPA is working to obtain pesticide use information that is applicable to listed species locations.

21. *New test procedures.* Comments indicated that EPA should have more toxicity research and develop new test procedures for representative species of wildlife to improve the EPA's "may affect" determinations.

Response: The EPA routinely requires ecological toxicity data on a variety of species to support pesticide registration. (See Unit VI.B. of this document.) Because it is not feasible to test all species that may be affected by pesticides, EPA uses toxicity data on surrogate species to represent species that are not tested directly, including listed species. The EPA acknowledges the need for an expanded toxicity data base for some pesticides and has proposed test methods and requirements for additional species (53 FR 20012). In addition, EPA has funded research to develop test methods for other species, such as freshwater mollusks, that may be used as more appropriate surrogates for certain listed species. Finally, EPA laboratories have initiated research on environmental fate and exposure data that will be used to refine EEC calculations.

Such additional information would be useful to help EPA make more sophisticated risk analyses and decisions. In addition to research conducted or funded by EPA, data needs have been transmitted to the National Agricultural Chemicals Association. Until such additional information becomes available, EPA uses the risk assessment techniques explained in Unit VI to fulfill its obligations to use the best available information in consultations with the FWS.

V. Interim Program

Until such time as enforceable measures of EPA's Endangered Species Protection Program are in place, EPA is planning to initiate an Interim Program. This is a voluntary program designed to accomplish three goals:

(1) Protect listed species from pesticides that have resulted in Biological Opinions identifying reasonable and prudent actions.

(2) Refine specific program direction.

(3) Prepare for full implementation.

These goals will be reached through involvement in and evaluation of a series of pilot programs, educational efforts, and requests for further public, state, and regional input.

A. Pilot Programs

The EPA intends to be involved in three related, but separate pilot efforts during this Interim Program which include: (1) special project pilots, (2) state-initiated plan pilots, and (3) Federal Program pilots. In all cases, EPA will seek information from involved parties in an effort to evaluate various approaches to protection of listed species. In addition, several pilots may yield information that is generic in its usefulness in developing measures to protect listed species in other locations.

1. Special project pilots. The EPA has funded several special projects for 1989 to 1990 under the Enforcement Cooperative Agreement Program administered through the EPA's Office of Compliance Monitoring. States submitted proposals for special projects to EPA. The EPA reviewed and rated these proposals and determined which would be funded. Five of the 12 special projects funded in FY '89 relate in some way to listed species protection. The EPA will work through its Regional Offices and with the involved states to evaluate the success of the special projects in those states that are exploring alternative methods to protect listed species. In addition, EPA will evaluate any information resulting from the special projects to determine utility to the Endangered Species Protection Program.

a. *California Department of Food and Agriculture.* The California Department of Food and Agriculture (CDFA) intends to develop a model program for gathering local data on approximately 45 listed species and their habitats. Information will be collected on local pesticide use, terrain, and climate; measures will be developed which CDFA believes will mitigate pesticide exposure. Part of the final CDFA project will be refined maps of listed species habitats. From analyses of habitats, adjacent pesticide use sites, and other factors that influence exposure of the species to pesticides, specific recommendations will be formulated to protect listed species in California. Since CDFA's efforts will address approximately 45 species, specific information may result which will be useful in other geographic areas where these species are found. In addition, procedures for habitat analysis, mapping, and information gathering will be reviewed to determine their applicability to other states or counties. If these procedures are determined to be of value in developing reasonable and prudent actions that are less limiting than those developed at the Federal level, but still protective of the listed species, EPA will share this information with other states and consider it in developing the Federal Program. The CDFA project also includes an effort to conduct a small field survey to determine the adequacy of pesticide labeling precautions to protect listed species. The information derived from this work will be directly useful to EPA in evaluating its own labeling approach.

b. *Minnesota Department of Agriculture.* Two of the seven federally listed species that are found in Minnesota (the Minnesota trout lily and the prairie bush-clover), have been identified as being jeopardized by certain pesticide use. Both species are found in rather isolated areas of certain rural counties, mostly on privately owned land with resident owners. Given this situation, Minnesota is proposing to develop and enter into "protection agreements" with landowners at each site. The agreements will be site-specific management plans to protect the species, requiring landowners to implement various provisions such as posting signs, monitoring the listed species population at least once a year, and reporting problems to FWS. A key element of this approach is the one-on-one personal contact of the state with the landowners, and the resulting opportunities for offering education and support, and for monitoring good management practices.

The EPA does not believe such an approach will work in many cases where species are very numerous or transient. However, EPA does not have the necessary experience to determine to what extent such an approach could serve as reasonable and prudent actions for protecting listed species. Through information obtained under the Minnesota grant, we hope to be able to better define the types of situations that may lend themselves to such an approach. Whether the state was able to contact owners of all land on which the two listed species occur, how many of those owners were willing to cooperate, whether the landowners agreeing to such an approach would have been affected by Federal limitations on pesticide use to protect listed species, and resources required to carry out such an approach are all parameters that would allow EPA to better define the utility of "protection agreements" within the context of its Endangered Species Protection Program.

c. *Puerto Rico Department of Agriculture.* Puerto Rico's project is intended to obtain pesticide usage and crop data in the area surrounding the site on which the species exists, to develop an experimental design for sampling, to collect and analyze samples, and to draw conclusions and recommendations regarding use of pesticides in the area. One species will be chosen for this project in the near future. An outline of the project and methodology will be produced for potential use by other states.

d. *Inter Tribal Council of Arizona.* The Inter Tribal Council of Arizona will form a working group on which individual tribes will have representation. The working group will identify listed species on each Arizona reservation and develop a model Endangered Species Tribal Plan. This plan will include maps of species habitat, enforcement matrices, and model ordinances to protect listed species. In addition, the working group will provide technical assistance in developing tribe-specific plans.

The EPA will review the recommendations of the Inter Tribal-Council of Arizona in terms of the potential applicability of those recommendations to other areas and will assist in obtaining FWS review of the recommendations to determine whether they can be considered reasonable and prudent actions for protection of listed species.

e. *Florida Department of Agriculture and Consumer Services.* The Florida Department of Agriculture and Consumer Services will develop advanced pesticide management techniques through use of a computerized Geographic Information System (GIS). The GIS allows many distinct data bases to be superimposed and displayed graphically. It also offers decisionmakers an opportunity to view and evaluate multiple geographic parameters (soil type, land use, etc.) concurrently on a regional or site-specific basis. Among other things the GIS will be used for identification and graphic display of geographic zones where groundwater protection and listed species protection zones overlap agricultural and other land-use data that are categorized based on crop site and pesticide use patterns, to target enforcement and monitoring efforts.

The EPA hopes to obtain information from Florida's efforts in this area, regarding the feasibility of developing GIS approaches at the Federal level to support the Endangered Species Protection Program. Through the experience of Florida, EPA can begin to assess the technical difficulties that may be encountered, the resource implications and the overall utility of such a system.

2. *State-initiated plans.* The EPA provided the states with an opportunity to initiate plans for protection of listed species within the states. These plans, if acceptable in terms of implementation and protection of listed species, will be adopted by EPA as Federal requirements within that state. For states that submit timely plans, EPA will work with them to pilot the approach within the state on a voluntary basis. By so doing, EPA, FWS, and the state can evaluate the plan to determine its effectiveness in protecting listed species, how well its provisions are understood by pesticide users, and whether implementation of the plan will fulfill the goals of the Endangered Species Protection Program.

The EPA is working through its Regional offices to determine which states are prepared to pilot all or parts of the plan they initiated. As states are identified, EPA will work closely with them to implement as a pilot and to evaluate their recommended measures to protect listed species.

3. *Federal Program pilots.* In addition to piloting state-initiated plans, EPA will pilot its overall approach to protect listed species where we have consulted with FWS and identified those pesticides for which use limitations are necessary. The Federal Program will be piloted only in states that indicate a willingness to participate. Pilot efforts of the Federal Program within the states will be voluntary on the part of the state governments and on the part of pesticide users, unless the state wishes to implement an enforceable program. In order to conduct these pilot programs, EPA will have to work very closely with each state participating to determine the most appropriate methods within each state for providing information to pesticide users, encouraging use of the information, and evaluating the Program. The EPA will encourage extensive state involvement since increased state participation and involvement may result in pilots that are more effective and revealing in terms of the effectiveness of the Endangered Species Protection Program.

B. Education and Outreach Efforts

The EPA will develop pilot-specific educational information to support the Interim Program. In addition, the Interagency Outreach and Education Task Group is also developing and reviewing information related to the Endangered Species Protection Program.

For each state participating in a pilot program, EPA will work with the state to develop informational materials to explain the specific Program to the public and to encourage participation and further input from those actually involved in the Program.

C. Public Participation

The EPA supports continued public involvement in and comment on the Endangered Species Protection Program. The EPA is initiating several efforts specifically to obtain further input during the Interim Program.

The EPA believes that species maps and information regarding potential reasonable and prudent actions are valuable as an educational tool for the public in addition to being the favored method for describing pesticide use limitations. As soon as FWS provides maps of listed species habitats, EPA will ensure that all affected states have an opportunity to review the maps. Further, when FWS identifies information on potential limitations of pesticide use, species potentially jeopardized and reasonable and prudent actions, this information will be distributed for public consideration. The purpose of this distribution is to inform affected parties of potential limitations, to obtain comments on the accuracy of the information, and to encourage voluntary use of the information to assess more realistically the impact the proposed limitations may have on the user. In addition, EPA will solicit geographically-specific, reasonable and prudent actions for consideration.

VI. Additional Technical Background Information

A. Consultation Procedures

Regulations governing ESA's section 7 consultation procedures pursuant to section 7 of ESA are codified in 50 CFR Part 402. A discussion of these regulations in reference to EPA's registration and reregistration activities follows.

1. A "conference" is designed to identify potential problems between an agency action, such as pesticide registration, and a species proposed to be listed (i.e., before it is listed) under ESA. There is also a more formal conference procedure (50 CFR 402.10 (d) and (e)), which follows the same basic procedures as a formal consultation, except that again the species is not yet listed. The EPA hopes to make use of formal conferences in the future, where appropriate, to provide more timely protection to listed species.

2. An "early consultation" attempts to identify potential conflicts between listed species and their critical habitats, and proposed actions prior to applying for the Federal pesticide registration. This type of consultation is conducted between the Federal agency, EPA, and FWS, but involves the registrant or applicant throughout the process. Pesticide registration has not used early consultation because the amount and quality of data needed from the registrant would be equivalent to that needed for registration, and the process would provide no benefit. Aspects of this consultation procedure (i.e., early involvement of the applicant) can be useful in expediting public health emergency exemption consultations.

3. A "biological assessment" evaluates the potential effects of Federal action(s) on listed species, species that are proposed to be listed, and their critical habitats. The goal is to determine which species or habitats are likely to be adversely affected and to determine if consultation is necessary. Biological assessments are only required for major construction activities. An agency may request from FWS a list of species that may be in the area of concern. This process is only required within the biological assessment process but can be requested for any action. The FWS is to provide such a list to the agency within 30 days.

4. An "informal consultation" is an optional process between a Federal agency and FWS and is designed to assist the Federal agency in determining if formal consultation and/or a conference are required.

5. A "formal consultation" is the process in which a Federal agency first determines if an agency action such as pesticide registration "may affect" a listed species or its critical habitat. If "no effect" is determined, the process concludes. If there is a "may affect" determination, then the agency initiates formal consultation with FWS which describes (i) the action, (ii) the specific area(s) affected, (iii) any species or critical habitats that may be affected, (iv) how the action will impact the species or habitats, (v) any cumulative effects, and (vi) any other relevant information. The FWS then concludes the formal consultation within 90 days, unless extended by mutual agreement.

Within 45 days after the conclusion of the formal consultation, FWS issues a written finding called a Biological Opinion to the Federal agency. During this 45-day time period, the Federal agency may request a draft of the Opinion primarily to analyze the reasonable and prudent alternatives. This cannot extend the 45-day period by more than 10 days unless an extension is mutually agreed upon.

The Biological Opinion should include a summary of the information on which the consultation is based, and a discussion of the effects of the action on the listed species or critical habitats, including a FWS determination on whether the action is likely to jeopardize the continued existence of a species or result in the destruction or adverse modification of critical habitat. Incidental take of species for which there is a "may affect" but is not likely to be jeopardized, will be identified. If possible, FWS will identify reasonable and prudent alternatives to the action, such as modification of the use of the pesticide, that the agency or registrant can take to avoid jeopardy. In addition, the Biological Opinion will identify (i) the amount or extent, if any, of acceptable incidental take of the species, (ii) reasonable and prudent measures to the action that will minimize the impact, (iii) terms and conditions to implement the reasonable and prudent measures, and (iv) procedures to handle or dispose of species taken. The FWS can also provide conservation recommendations that the agency may or may not consider.

Issuance of the Biological Opinion terminates the formal consultation process. If the Federal agency cannot comply with a Biological Opinion, it may apply for an exemption under section 7 of ESA.

6. A "reinitiation of consultation" is required if (i) incidental take is exceeded, (ii) new information is obtained which may affect the assessment(s) of species or critical habitats in a manner not previously considered, (iii) the action is subsequently modified and causes an effect to the species or habitat not previously considered, and (iv) new species or critical habitats have been designated that may be affected by the action.

B. The EPA'S "May Affect" Determinations

Ecological risk from pesticide use is a function of toxicity and environmental exposure (Ref. 1). This Unit summarizes risk assessment procedures used by EPA and indicates how these standard procedures are adapted for determining whether a pesticide "may affect" listed species. The EPA evaluates data and risks in a tiered fashion. The first risk evaluation is based upon laboratory toxicity and environmental fate data. If the initial evaluation indicates a significant concern, then EPA requests registrants to supply additional laboratory and/or field data in order to refine the risk assessment.

1. *Toxicity evaluations.* Data used in assessing toxicity include acute and chronic test data. For acute toxicity, EPA evaluates LC50 and LD50 tests, which are submitted in response to EPA data requirements (40 CFR Part 158). The LC50 is the statistically derived estimate of the concentration (median lethal concentration) that would cause mortality to 50 percent of the test population. In contrast, the LD50 is the statistically derived estimate of the single dose (median lethal dose) that would cause mortality to 50 percent of the test population. Both tests are conducted with surrogate species that are used to evaluate the potential risk to other species.

To assess acute toxicity of pesticides to birds, EPA guidelines require one LD50 study for an upland game bird (preferably bobwhite quail) or waterfowl (preferably mallard duck) and one LC50 study for each species. To assess toxicity to aquatic species (fish and invertebrates), EPA requires LC50 studies on a warm water species (preferably bluegill sunfish), a cold water species (preferably rainbow trout), and an invertebrate (preferably *Daphnia magna*). Toxicity to non-target mammals is initially assessed by considering LD50 data for laboratory rats, which EPA requires to evaluate pesticide hazards to humans. Typically, EPA requires data on honeybees to address the risks to beneficial insects.

The acute toxicity data described above are basic requirements that are generally available for all pesticides with outdoor uses. For some kinds of

pesticide uses, or where these basic data warrant additional data, EPA may require higher tier testing. Higher tier acute data may include toxicity to estuarine fish, invertebrates, and oyster embryo larvae; and oyster shell deposition studies. Chronic toxicity data are all higher tier and may include data on avian reproductive effects, fish early-life stage toxicity, chronic toxicity to mammals and to freshwater fishes, estuarine fishes, and invertebrates. Rarely are data from field studies, aquatic pond studies, or secondary toxicity studies available, although such data recently have been required for some pesticides. The EPA validates all data using its Standard Evaluation Procedures (Refs 2 through 24).

2. *Environmental exposure.* Data used for the exposure assessment of a pesticide include (1) its physical/chemical properties; (2) environmental fate data, including data on persistence; (3) label information such as application sites, rates, methods, and timing; (4) bioconcentration; and (5) factors related to the species themselves, such as their biology, ecology, and distribution. Occasionally, field residue data applicable to non-target species are available.

The exposure assessment has two components. The first component is the determination of the EEC's that may result from use of the pesticide according to label directions. The second is a determination of whether non-target species are expected to be exposed to the EEC.

The EPA uses various models to determine EEC's to evaluate the risk to aquatic species. Whenever possible, actual field study or residue data also are reviewed. The models used include (a) a water model, (b) a simple drift model, (c) a simple runoff model, and (d) a computer runoff and exposure simulation model. Computer based models include the Simulator for Water Resources in Rural Basins (SWRRB) and Exposure Analysis Modeling System (EXAMS). The EPA is working on conversion of existing SWRRB scenarios to use in another computer model, the Pesticide Root Zone Model (PRZM), and other models to make more accurate predictions of drift and runoff loading to adjacent terrain and water bodies, and drift from ground level applications.

To determine EEC's for listed terrestrial species, EPA estimates residues on food items consumed by the species. Estimated residues, primarily on plants and insects, are based mainly on studies by Hoerger and Kenaga (Ref. 25), and Kenaga (Ref. 26). These studies utilize actual pesticide residue values for several types of vegetable material, such as long and short range grasses; leaves and leafy crops; forage crops; pods containing seeds; and fruit (cherries, peaches, grapes, citrus). Residues are given on the basis of a pesticide application rate of 1 lb/A and then adjusted for the label rate. The estimates represent maximum expected residues for day zero (immediately after application), accompanied by upper and lower confidence limits. When possible, actual validated residue data also are considered.

In estimating the environmental concentrations, EPA also considers the formulation of the product, such as liquid, granular, or fumigant formulations. The available validated pesticide and environmental fate data are used in the computer based models to provide more accurate assessments from multiple applications, as identified on the label. Specific scenarios have been developed for runoff from specific crop sites, as well as environmental concentrations in a pond-stream environment. Data, such as water chemistry data, are often insufficient to accurately run the more sophisticated computer based models. The EPA is attempting to develop additional scenarios to address additional use sites, different application methods (aerial, ground, etc.), cropping practices (no-till, strip crop, rotation, etc.), application techniques (band, in-furrow, side-dressing, etc.), and integrated pest management practices so that alternatives can be identified that will protect listed species.

3. *Risk assessment.* In assessing the risk to non-target species in general, EPA compares the toxicity information with the EEC and then determines the likelihood that non-target organisms will actually be exposed. Comparisons of LC50 or LD50 values with EEC's indicate whether additional data may be required or that a particular pesticide may warrant restricted use classification if actual exposure may occur. When evaluating impacts to federally listed species, EPA does not rely solely on the LC50 or LD50 end points since some listed species may not be able to withstand even the loss of a few individuals in the population, much less 50 percent. Therefore, more stringent criteria have been developed to provide greater protection for populations of listed species, whose numbers in many instances are dangerously low. Thus, criteria were developed to determine the environmental concentrations at which a pesticide "may affect" a listed species. These criteria were developed for mammals, birds, and aquatic organisms as follows:

mammals—EEC equal to or greater than 1/5th the lowest mammalian acute oral LD10 or LC10, or 1/10th the lowest LD50 or LC50;

birds—EEC equal to or greater than 1/5th the lowest avian acute oral LD10 or subacute dietary LC10 or 1/10th the lowest LD50 or LC50; and

aquatic organisms—EEC equal to or greater than 1/10th the lowest aquatic LC10, or 1/20th the lowest aquatic LC50.

When the above criteria are exceeded for any relevant taxa, the magnitude of the potential impact is determined by calculating a hazard ratio, which is the ratio of the EEC (based on a specific application rate) over the toxicity criteria. Any hazard ratio of one or greater confirms that a "may affect" situation exists, since the predicted residues in the environment are equal to or exceed the amount of the pesticide that could be hazardous to the species. Higher hazard ratios indicate a greater magnitude of concern.

For most currently registered pesticides, ecological impacts from acute toxicity are more likely than those from chronic toxicity. However, EPA also considers information related to subchronic and chronic risks, reproductive effects, and bioaccumulation factors. The laboratory test data (e.g., chronic feeding, life cycle, oncogenicity, or reproductive studies) on no-effect-levels or no-observable-effect levels (NOEL) and/or effect levels are compared with estimated or actual field residues. When these residues are in excess of the NOEL for appropriate surrogates of listed species, EPA considers that a "may affect" situation exists.

Secondary hazards are associated with acute and chronic toxicity relating to bioaccumulation of a pesticide in the food chain and body residues of target or non-target organisms consumed by organisms higher in the food chain. Again, estimated or actual residues in food items are correlated with diet of the non-target organisms and compared with the acute and chronic toxicity values.

In evaluating the risk from pesticide use, EPA also considers other information. For example, toxicity to non-target insects, such as honey bees, is important because pollination can be critical to certain listed plants. Any reports of pesticide incidents involving non-target species, even if they are not listed species, also are considered.

Finally, effects on listed species' habitats and food supply are also considered. For example, the Everglade snail kite feeds specifically on the apple

snail. Therefore, any disruption of the apple snail's habitat from pesticides or pesticide toxicity to the apple snail itself may adversely affect the Everglade snail kite. Also, herbicide disruptions of animal and plant community balance also could adversely impact the habitat or micro-habitat of listed species. For example, herbicides are unlikely to be directly toxic to the valley elderberry longhorn beetle, but they may destroy the elderberry trees in which the beetle lives. On occasion, pesticide use may be beneficial to some species' habitats by reversing adverse plant competition trends that have been exacerbated by other human activities, such as exotic introductions and wildfire control.

When all the data are evaluated and "may affect" determinations made, EPA assembles all of the relevant information and/or references, along with any reasonable and prudent alternatives that are known, and sends it to FWS requesting consultation. The species and pesticides included in this request are only those where a "may affect" determination was made.

Following receipt of the request for consultation, FWS prepares the Biological Opinion and determines if the use is likely to pose jeopardy to the continued existence of a species, if the use will result in the destruction or adverse modification of critical habitat of a species or if incidental take is anticipated and provisions are necessary to minimize these impacts. A "may affect" determination by EPA may not result in a jeopardy determination by FWS or result in any anticipated incidental take.

C. Threshold Application Rate Estimates

Some pesticides (e.g., certain ones that have been subject to Special Review) have been evaluated enough that the application rates that would result in a "may affect" determination are already known. For other pesticides, EPA will first screen them to determine if the highest application rate would result in a "may affect" determination. Pesticides that do not exceed the "may affect" criteria are dropped from further analysis. For pesticides that do exceed the criteria at the highest application rate, EPA then will determine the EEC that would result from an application rate of 1 pound active ingredient per acre (lb ai/A) for various combinations of application methods and formulation types (and environments, where appropriate) of a pesticide. Typically, EPA then will compare the resulting EEC's to toxicity to obtain a hazard ratio.

A hazard ratio of "1" or greater indicates that the EEC has met or exceeded our "may affect" criteria. If using 1 lb ai/A application rate results in a hazard ratio of less than one (indicating the "may affect" criteria has not been met at that rate), the ratio allows EPA to calculate the highest application rate that would still not result in a "may affect" determination, which may be compared with product label rates.

This is accomplished by multiplying the 1 lb ai/A application rate by the reciprocal of the hazard ratio. For example, if the hazard ratio is ⅕ based on a 1 lb ai/A application rate, the application rate which would result in a "may affect" determination would be 1 lb ai/A × 5/1 or 5 lb ai/A. The same procedure applies even if the hazard ratio is greater than 1. However, the application rate derived in the latter case might not be a rate specified on the label in which case all label use rates would result in a "may affect" to listed species.

VII. Public Record and Solicitation of Comments

A. Public Record

The EPA is providing a 90-day period to comment on the Notice. Comments must be received on or before October 2, 1989. All comments and information should be submitted in triplicate to the address given in this Notice under "**ADDRESS.**" The comments and information should bear the identifying notation "OPP–36168". Information for which a claim of CBI has been asserted will not, however, be placed in the docket.

The EPA has established a public record (public docket #36154) for the Endangered Species Protection Program. The public record includes:

1. This Notice.
2. The March 9, 1988, Notice (53 FR 7716).
3. Documents and copies of written comments submitted to EPA in response to the March 9, 1988, Notice.
4. Transcripts of the public meetings held in the spring of 1988.
5. Other materials related to the Endangered Species Protection Program.

B. Solicitation of Comments

The EPA invites comments on any aspect of the proposed Program. The EPA specifically welcomes comments on two issues. First, EPA solicits comments on the generic labeling approach, as opposed to one in which the labels identify the names of the counties affected (county-specific labeling). Second, EPA encourages comments on means to effectively implement use limitations for outdoor uses by homeowners. A discussion of these two issues is contained in the Units that follow.

1. *Generic labeling versus county-specific labeling.* In the March 9, 1988, **Federal Register** Notice (53 FR 7717), EPA proposed county-specific labeling, which meant that affected products would be labeled with a precaution regarding listed species and a list of counties in which Bulletins would have to be obtained. All counties included in the Program as a result of Biological Opinions were to have been listed on the label, and only those individuals using pesticides in those counties would be required to obtain a Bulletin and follow the use limitations specified in the Bulletin. Bulletins would contain county maps and/or habitat descriptions showing the currently occupied habitat of the listed species and would describe the use limitations necessary to preclude jeopardy to or reduce incidental take of the species.

In this Notice, EPA is proposing a generic labeling approach. (Refer to Unit III.B.) Labeling of an affected pesticide would instruct users of the product to comply with the use limitations that may be contained in a Bulletin for the county where the pesticide is to be used. Although a list of counties would not appear on the label, Bulletins would be specific to a county. For counties with no use limitations, Bulletins would provide general information about protecting listed species.

There is one significant difference in design between the two approaches described here. The difference is that in the county-specific approach, users of pesticides would know from the label if a Bulletin would apply to their county. In the currently proposed generic labeling approach, it would not be apparent from the label if a Bulletins applies to their county, but if it does, the user must follow it. Thus, the second approach will make it potentially more difficult for users to know whether their particular area is affected since the counties will not be listed on the label.

Under either approach, there would be no difference in the area actually subject to use limitations. Only persons using affected pesticides in the currently occupied habitat of a species for which a Biological Opinion specified protective measures would be required to follow the use limitations in the Bulletin to ensure that their actions will not pose a threat to listed species.

The EPA recognizes that there are certain trade-offs as a result of this difference. County-specific labeling

would be more convenient to users, since it would be readily apparent where special instructions applied, and it would avoid the potential inconvenience of users having to determine whether use limitations applied in their county. Generic labeling would be more convenient to registrants because labels would have to be changed infrequently. Generic labeling would provide EPA with some administrative advantages, but would require more efforts to develop additional Bulletins and inform users of the existence or lack of use limitations in a county. County-specific labeling would likely delay protective measures for added species during the time necessary to relabel products.

In the proposed Program described in this document, EPA intends to re-evaluate pesticides with existing Biological Opinions declaring jeopardy and to reinitiate consultation with FWS where warranted. As a result, EPA does not yet have specific information on which pesticides and species will be included in the forthcoming enforceable Program. However, based on the Program that EPA intended to implement in 1988, a total of 910 counties (approximately 30 percent of the counties in the United States) would have been affected. Under the initial proposal, all users of affected pesticides in these 920 counties would have been required to obtain a Bulletin or in the case of mosquito larvicides and forestry products, place a telephone call to the FWS; no actions would be required for pesticide users in 70 percent of the counties. With generic labeling, pesticide users in these unaffected counties would be required to know if there are use limitations and to follow any that are applicable.

The EPA believes that the advantages of generic labeling exceed the advantages of county-specific labeling for several reasons. Once labels carry the revised language, they would have to be changed only when all use limitations are deleted for a pesticide product. Because of the time needed for registrants to produce new labels for affected products and the time necessary for products with old labels to clear the marketplace, relabeling a product to provide effective protection takes approximately 2 years. Under generic labeling, addition or deletion of a species from the Program as a result of new or revised Biological Opinions would be reflected through revision of Bulletins and could be made more rapidly than through requiring label changes. Similarly, no label changes would be required to accommodate state-initiated plans, changes in reasonable and prudent actions or revised assessments of particular use sites. The use of Bulletins in unaffected counties also may sensitize pesticide users to the need to protect listed species, thus promoting the use of the Bulletins when and if use limitations become necessary.

During the first few years of the Program, many changes in affected species and affected pesticides are likely as EPA and FWS evaluate and assess currently-registered pesticides. Because of the cost savings associated with generic labeling, industry may be cooperative in assisting with public outreach activities to inform pesticide users where use limitations do and do not apply. If generic labeling is adopted, EPA will explore various means, including the possibility of a toll free telephone number, for the convenience of pesticide users to assist them in determining whether their pesticide use site is in an affected county.

The major disadvantage of generic labeling is that users of affected products in all counties would have to become aware of whether any use limitations to protect listed species existed in their county. Because the Bulletins containing the use limitations may change as often as annually, pesticide users would have to determine if there are any changes each year. The EPA is concerned that users in initially unaffected counties may become apathetic to future limitations in those counties and cease checking to determine whether they are subject to use limitations if they have checked for several years and found none. User opposition to the Program may result, which could lead to decreased user compliance. With county-specific labeling, the existence of use limitations in a particular county would be clear as a result of listing the counties on the label.

To provide further analysis of generic versus county-specific labeling, EPA will estimate the impacts to pesticide registrants and pesticide users under both implementation scenarios by quantifying the costs imposed on society. Under generic labeling, pesticide users would have to take the time to determine if use limitations apply in the county in which they plan to use the pesticide. This factor will be analyzed in terms of the cost of additional time. In contrast, county-specific labeling would impose additional label modification costs on pesticide registrants, but may cost the user less time. The EPA plans to weigh the increased opportunity cost of time for generic labeling against the increased label modification costs of county-specific labeling. The ability of both approaches to disseminate information to the user community and thus reduce the risk to listed species will also be considered in the analysis.

The EPA is especially interested in receiving feedback from users on these two approaches, since user understanding and acceptance will be critical to the success of the Program. EPA thus solicits specific comments on generic labeling versus county-specific labeling.

2. *Methods for implementing use limitations for homeowners.* The ESA mandates the protection of listed species in their habitats, which can include urban, suburban, and rural areas. Home and garden products may be used in all of these areas and may expose listed species. The EPA believes that to fulfill its obligations under ESA, it is not appropriate to differentiate among agricultural users and household users when either may expose a listed species through pesticide use. The EPA thus believes that it is essential to include products labeled for home and garden use that "may affect" listed species. The EPA is proposing that home and garden products used outdoors not be exempted from the Program. (Refer to Unit IV.2.f.).

The EPA recognizes that there are differences in the nature of some of the pesticide products used by homeowners. In its review to determine whether a pesticide "may affect" listed species, EPA will consider that areas treated by homeowners are typically smaller in size and thus less likely to result in widespread environmental concentrations that may be detrimental to listed species, especially where transport away from the site of application is necessary to expose the species. The EPA will also consider the application rates and methods, and the concentration of the active ingredient in the product when estimating EEC's. Only if the EEC exceeds the "may affect" criteria (refer to Unit VI) will EPA refer the pesticide to the FWS for a Biological Opinion. In the Biological Opinion, the FWS will consider the proximity of use of the product to listed species habitat.

While EPA believes the factors it considers in determining whether a pesticide "may affect" listed species, and the FWS procedures for developing Biological Opinions will result in minimal limitations on home and garden products, EPA will continue to seek measures to further limit the burden on this population of pesticide users. The

EPA specifically requests comments on other factors it may consider to reduce this burden while continuing to protect listed species.

The EPA also recognizes that implementation of the Program for homeowners may require very different methods. Users of home and garden products are rarely certified applicators and, therefore, would not have undergone certification training, which is a major means of educating and informing agricultural users of pesticides.

The EPA solicits specific comments on means to reach and inform users of home and garden products about any use limitations to which they may be subject. At present, EPA expects to use the labeling/bulletin approach for home and garden products, but is open to alternative approaches. With any approach, EPA continues to seek suggestions on means of communicating effectively with users of home and garden products.

VIII. References

With the exception of the studies by Hoerger and Kenaga (Ref. 25) and Kenaga (Ref. 26), which are published in the scientific literature, all references are available from the National Technical Information Service (NTIS). Orders may be placed to NTIS by telephone at (703) 487–4650 or by mail to the following address: National Technical Information Service, ATTN: Order Desk, 5285 Port Royal Road, Springfield, Virginia 22161.

The references used in this document are as follows:

(1) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure for Ecological Risk Assessment. EPA 540–9–86–167. NTIS No. PB86–247657.

(2) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division. Standard Evaluation Procedure Wild Mammal Toxicity Test. EPA–540/9–85–004. NTIS No. PB86–129251.

(3) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division. Standard Evaluation Procedure Avian Dietary LC50 Test. EPA–540/9–85–008. NTIS No. PB86–129293.

(4) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division Standard Evaluation Procedure Avian Single-Dose Oral LD50 Test. EPA–540/9–85–007. NTIS No. PB86–129285.

(5) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Pesticide Spray Drift Evaluation: Droplet Size Spectrum Test and Drift Field Evaluation Test. EPA–540/9–86–131. NTIS No. PB87–102216.

(6) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division Standard Evaluation Procedure Honey Bee—Acute Contact LD50. EPA–540/9–85–002. NTIS No. PB86–154580.

(7) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division Standard Evaluation Procedure Honey Bee—Toxicity of Residues on Foliage. EPA–540/9–85–003. NTIS No. PB86–129244.

(8) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division Standard Evaluation Procedure Acute Toxicity Test for Freshwater Fish. EPA–540/9–85–006. NTIS No. PB86–129277.

(9) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division Standard Evaluation Procedure Acute Toxicity Test for Freshwater Invertebrates. EPA–540/9–85–005. NTIS No. PB86–129269.

(10) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division Standard Evaluation Procedure Acute Toxicity Test for Estuarine and Marine Organisms (Mollusc 48-Hour Embryo Larvae Study. EPA–540/9–85–012. NTIS No. PB86–129335.

(11) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division Standard Evaluation Procedure Acute Toxicity Test for Estuarine and Marine Organisms (Estuarine Fish 96-Hour Acute Toxicity Test). EPA–540/9–85–009. NTIS No. PB86–129301.

(12) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division Standard Evaluation Procedure Acute Toxicity Test for Estuarine and Marine Organisms (Shrimp 96-Hour Acute Toxicity Test). EPA–540/9–85–010. NTIS No. PB86–129319.

(13) U.S. Environmental Protection Agency. 1985. Hazard Evaluation Division Standard Evaluation Procedure Acute Toxicity Test for Estuarine and Marine Organisms (Mollusc 96-Hour Flow-Through Shell Deposition Study). EPA–540/9–85–011. NTIS No. PB86–129327.

(14) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure *Daphnia magna* Life-cycle (21-Day Renewal) Chronic Toxicity Test. EPA–540/9–86–141. NTIS No. PB87–209730.

(15) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Fish Life-Cycle Toxicity Tests. EPA–540/9–86–137. NTIS No. PB87–209169.

(16) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Fish Early Life-Stage. EPA–540/9–86–138. NTIS No. PB87–209722.

(17) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Avian Reproduction Test. EPA–540/9–86–139. NTIS No. PB87–209177.

(18) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Field Testing for Pollinators. EPA–540/9–86–140. NTIS No. PB87–209714.

(19) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Non-Target Plants: Target Area Testing. EPA–540/9–86–130. NTIS No. PB87–101689.

(20) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Non-Target Plants: Seed Germination/Seedling Emergence—Tiers 1 and 2. EPA–540/9–86–132. NTIS No. PB87–102240.

(21) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Non-Target Plants: Terrestrial Field Testing—Tier 3. EPA–540/9–86–135. NTIS No. PB87–101697.

(22) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Non-Target Plants: Vegetative Vigor—Tiers 1 and 2. EPA–540/9–86–133. NTIS No. PB87–102224.

(23) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Non-Target Plants: Growth and Reproduction of Aquatic Plants—Tiers 1 and 2 Test. EPA–540/9–86–134. NTIS No. PB87–102232.

(24) U.S. Environmental Protection Agency. 1986. Hazard Evaluation Division Standard Evaluation Procedure Non-Target Plants: Aquatic Field Testing—Tier 3. EPA–540/9–86–136. NTIS No. PB187–101705.

(25) Hoerger, F.D., and E.E. Kenaga. 1972. Pesticide Residues on Plants Correlation of Representative Data as a

Basis for Estimation of Their Magnitude in the Environment. Environmental Quality. Academic Press, New York I:9–28.

(26) Kenaga, E.E. 1973. Factors to be Considered in the Evaluation of the Toxicity of Pesticides to Birds in Their Environment. Environmental Quality and Safety. Academic Press, New York II:166–181.

Dated: June 21, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

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federal register

Monday
July 3, 1989

Part IV

Department of Education

Invitation for Applications for Fiscal Year 1990 New Awards; International Education Programs; Notice

Digest

Part IV

Department of Education

Invitation for Applications for Fiscal Year 1990 New Awards: International Education Programs; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.016, 84.017, and 84.153]

Invitation for Applications for Fiscal Year 1990 New Awards; International Education Programs

AGENCY: Department of Education.

ACTION: Combined notice inviting applications for Fiscal Year 1990 new awards under the following International Education Programs: Undergraduate International Studies and Foreign Language, International Research and Studies, and Business and International Education.

Purpose

Applications are invited for new awards for Fiscal Year 1990 under Title VI of the Higher Education Act of 1965, as amended (the HEA, for the following programs: the Undergraduate International Studies and Foreign Language Program (34 CFR Part 658); the International Research and Studies Program (34 CFR Part 660); and the Business and International Education Program (34 CFR Part 661).

The Undergraduate International Studies and Foreign Language Program provides grants to institutions of higher education, combinations of those institutions, and public and private nonprofit agencies and organizations, including professional and scholarly associations, to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

The International Research and Studies Program provides grants to public and private agencies, organizations, institutions, and individuals to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and related fields.

The Business and International Education Program provides grants to institutions of higher education to enhance international business education programs and to expand the capacity of the business community to engage in international economic activities.

Deadlines for Transmittal of Applications

For the International Research and Studies Program—October 30, 1989;

For the Undergraduate International Studies and Foreign Language Program—November 6, 1989;

For the Business and International Education Program—November 8, 1989.

Applications Available

August 31, 1989.

Eligible Applicants

For the Undergraduate International Studies and Foreign Language Program, eligible applicants are institutions of higher education, combinations of institutions of higher education, and public and private nonprofit agencies and organizations, including professional and scholarly associations.

For the International Research and Studies Program, eligible applicants are public and private agencies, organizations, institutions, and individuals.

For the Business and International Education Program, eligible applicants are institutions of higher education.

Priorities

The Secretary gives a competitive preference to applications for the International Research and Studies Program for Fiscal Year 1990 that propose to provide: Research on more effective methods of providing competency-based instruction and evaluating proficiency in the languages of the Middle East, South Asia, Southeast Asia, Eastern Europe and the U.S.S.R., Inner Asia, East Asia, and languages indigenous to Africa and Latin America. This priority is consistent with the list of priorities established in the regulations governing this program (34 CFR 660.34). This priority will be implemented in accordance with the provisions of the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(2)(ii).

There are no priorities for the Undergraduate International Studies and Foreign Language Program and for the Business and International Education Program for Fiscal Year 1990.

INTERNATIONAL EDUCATION PROGRAMS

Title and CFDA number	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Undergraduate International and Foreign Language Program (CFDA No. 84.016).	$1,200,000	$30,000 to $75,000	$48,000	25	24 to 36
International Research and Studies Program (CFDA No. 84.017)	1,094,274	23,000 to 156,000	66,000	18	12 to 36
Business and International Education Program (CFDA No. 84.153)	755,000	40,000 to 100,000	75,000	10	24

Applicable Regulations

(a) Undergraduate International Studies and Foreign Language Program, 34 CFR Parts 655 and 658; (b) International Research and Studies Program, 34 CFR Parts 655 and 660; (c) Business and International Education Program, 34 CFR Parts 665 and 661; and (d) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 85.

For Applications or Information Contact

Ralph Hines or Christine Corey (Undergraduate International Studies and Foreign Language Program), Telephone (202) 732-3283 or (202) 732-3293, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3052, ROB-3, Washington, DC 20202-5332;

Jose L. Martinez (International Research and Studies Program), Telephone (202) 732-3297, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3053, ROB-3, Washington, DC 20202-5331;

Susanna C. Easton (Business and International Education Program), Telephone (202) 732-3302, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3053, ROB-3, Washington, DC 20202-5332;

Program Authority

Undergraduate International Studies and Foreign Language Program.

(20 U.S.C. 1124)

International Research and Studies Program (20 U.S.C. 1125).

Business and International Education Program (20 U.S.C. 1130-1130b).

Dated: June 27, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89-15604 Filed 6-30-89; 8:45 am]

BILLING CODE 4000-01-M

federal register

Monday
July 3, 1989

Part V

Agency For International Development

Housing Guaranty Program; Government of Jordan; Notice of Investment Opportunity

Digest

Part V

Agency For International Development

Nigeria Country Program Development
of Jordan Notice of Investment
Opportunity

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Government of Jordan; Notice of Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan to the Government of Jordan as part of A.I.D.'s development assistance program. The proceeds will be used to finance shelter projects for low-income families in Jordan. At this time, the Government of Jordan has authorized A.I.D. to request proposals from eligible lenders for a loan under this program of Twenty Million U.S. Dollars ($20,000,000). The name and address of the representatives of the Borrower to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Jordan

Loan No: 278–HG–001/003—$20,000,000
Attention: Mr. Mansour Haddadin
Director of Finance, Ministry of Finance
P.O. Box 85, Amman, Jordan
Telex No.: 23634 FINANCE JO
Telefax No.: 962/6/643121
Tel. Nos.: 962/6/636321

Interested lenders should telex their bids to the Borrower's representative by 5:30 p.m. (EST) July 17, 1989. Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following: John R. Power Agency for International Development GC/PRE, Room 3328 N. S., Washington, D.C. 20523, Telex No.: 202/647–4958 (preferred communication), Telex No.: 892703 AID WSA), Telephone: 202/647–6505.

Trent Harrington
111–81–5573 Zaharan Street
Jebel Amman, USAID/Amman
Amman, Jordan
Telex No.: 24350 USAID JORDAN
Telefax No.: 962/6/604858
Tel. No.: 962/6/604171

Mr. David Olinger, Assistant Director, Near East RHUDO/Tunis, USAID/Tunis
28 Rue Suffex, Notre Dame
c/o American Embassy, Tunis, Tunisia
Telex No.: USAID TN 14182
Telefax No.: 216/1–782464 (preferred communication)
Tel. No.: 216/1–784300

For your information the Borrower is currently considering the following terms:

1. *Amount:* U.S. $20 million.
2. *Term:* Up to 30 years.
3. *Grace Period:* 10 years on principal, 3 years on interest.
4. *Interest Rate:* Fixed.
5. *Drawdown:* Proceeds from borrowing to be disbursed at closing. The entire $20 million will be disbursed in a single disbursement to the Borrower at the time of the loan closing. No escrow account is required.
6. *Closing Date:* Estimated 60 days from date of selection of investor.
7. *Fees:* Borrower agrees to pay all closing costs. Lenders are requested to include all legal fees in their placement fee.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loan would be guaranteed by A.I.D. The A.I.D. guaranty would be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loan must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rate may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of lenders and other aspects of the A.I.D. Housing Guaranty Program can be obtained from: Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 401, SA–2, Washington, DC 20523–0214 Telephone: 202/663–2530.

Michael G. Kitay,

Assistant General Counsel, Bureau for Private Enterprise, Agency for International Development.

Date: June 30, 1989.

[FR Doc. 89–15828 Filed 6–30–89; 10:43 am]
BILLING CODE 6116–01–M

Reader Aids

Federal Register

Vol. 54, No. 126

Monday, July 3, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

27855-28016.....3

LIST OF PUBLIC LAWS

Last List June 26, 1989

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 881/Pub. L. 101-42

Coquille Restoration Act. (June 28, 1989; 103 Stat. 91; 4 pages) Price: $1.00

H.J. Res. 111/Pub. L. 101-43

Designating June 23, 1989, as "United States Coast Guard Auxiliary Day". (June 28, 1989; 103 Stat. 95; 1 page) Price: $1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Jan. 1, 1988
3 (1988 Compilation and Parts 100 and 101)	21.00	[1] Jan. 1, 1989
4	14.00	Jan. 1, 1988
5 Parts:		
1-699	14.00	Jan. 1, 1988
700-1199	15.00	Jan. 1, 1988
1200-End, 6 (6 Reserved)	11.00	Jan. 1, 1988
7 Parts:		
0-26	15.00	Jan. 1, 1988
27-45	11.00	Jan. 1, 1988
46-51	16.00	Jan. 1, 1988
52	23.00	[2] Jan. 1, 1988
53-209	18.00	Jan. 1, 1988
210-299	22.00	Jan. 1, 1988
300-399	11.00	Jan. 1, 1988
400-699	17.00	Jan. 1, 1988
700-899	22.00	Jan. 1, 1988
900-999	26.00	Jan. 1, 1988
1000-1059	15.00	Jan. 1, 1988
1060-1119	12.00	Jan. 1, 1988
1120-1199	11.00	Jan. 1, 1988
1200-1499	17.00	Jan. 1, 1988
1500-1899	9.50	Jan. 1, 1988
1900-1939	11.00	Jan. 1, 1988
1940-1949	21.00	Jan. 1, 1988
1950-1999	18.00	Jan. 1, 1988
2000-End	6.50	Jan. 1, 1988
8	11.00	Jan. 1, 1988
9 Parts:		
1-199	19.00	Jan. 1, 1988
200-End	17.00	Jan. 1, 1988
10 Parts:		
0-50	18.00	Jan. 1, 1988
51-199	14.00	Jan. 1, 1988
200-399	13.00	[3] Jan. 1, 1987
400-499	13.00	Jan. 1, 1988
500-End	24.00	Jan. 1, 1988
11	10.00	[2] Jan. 1, 1988
12 Parts:		
1-199	11.00	Jan. 1, 1988
200-219	10.00	Jan. 1, 1988
220-299	14.00	Jan. 1, 1988
300-499	13.00	Jan. 1, 1988
500-599	18.00	Jan. 1, 1988
600-End	12.00	Jan. 1, 1988
13	20.00	Jan. 1, 1988
14 Parts:		
1-59	21.00	Jan. 1, 1988
60-139	19.00	Jan. 1, 1988
140-199	9.50	Jan. 1, 1988
200-1199	20.00	Jan. 1, 1988
1200-End	12.00	Jan. 1, 1988
15 Parts:		
0-299	10.00	Jan. 1, 1988
300-399	20.00	Jan. 1, 1988
400-End	14.00	Jan. 1, 1988
16 Parts:		
0-149	12.00	Jan. 1, 1989
150-999	13.00	Jan. 1, 1988
1000-End	19.00	Jan. 1, 1988
17 Parts:		
1-199	14.00	Apr. 1, 1988
200-239	14.00	Apr. 1, 1988
240-End	21.00	Apr. 1, 1988
18 Parts:		
1-149	15.00	Apr. 1, 1988
150-279	12.00	Apr. 1, 1988
280-399	13.00	Apr. 1, 1988
400-End	9.00	Apr. 1, 1988
19 Parts:		
1-199	27.00	Apr. 1, 1988
200-End	5.50	Apr. 1, 1988
20 Parts:		
1-399	12.00	Apr. 1, 1988
400-499	23.00	Apr. 1, 1988
500-End	25.00	Apr. 1, 1988
21 Parts:		
1-99	12.00	Apr. 1, 1988
100-169	14.00	Apr. 1, 1988
170-199	16.00	Apr. 1, 1988
200-299	5.00	Apr. 1, 1988
300-499	26.00	Apr. 1, 1988
500-599	20.00	Apr. 1, 1988
600-799	7.50	Apr. 1, 1988
800-1299	16.00	Apr. 1, 1988
1300-End	6.00	Apr. 1, 1988
22 Parts:		
1-299	20.00	Apr. 1, 1988
300-End	13.00	Apr. 1, 1988
23	16.00	Apr. 1, 1988
24 Parts:		
0-199	15.00	Apr. 1, 1988
200-499	26.00	Apr. 1, 1988
500-699	9.50	Apr. 1, 1988
700-1699	19.00	Apr. 1, 1988
1700-End	15.00	Apr. 1, 1988
25	24.00	Apr. 1, 1988
26 Parts:		
§§ 1.0-1-1.60	13.00	Apr. 1, 1988
§§ 1.61-1.169	23.00	Apr. 1, 1988
§§ 1.170-1.300	17.00	Apr. 1, 1988
§§ 1.301-1.400	14.00	Apr. 1, 1988
§§ 1.401-1.500	24.00	Apr. 1, 1988
§§ 1.501-1.640	15.00	Apr. 1, 1988
§§ 1.641-1.850	17.00	Apr. 1, 1988
§§ 1.851-1.1000	28.00	Apr. 1, 1988
§§ 1.1001-1.1400	16.00	Apr. 1, 1988
§§ 1.1401-End	21.00	Apr. 1, 1988
2-29	19.00	Apr. 1, 1988
30-39	14.00	Apr. 1, 1988
40-49	13.00	Apr. 1, 1988
50-299	15.00	Apr. 1, 1988
300-499	15.00	Apr. 1, 1988
500-599	8.00	[4] Apr. 1, 1980
600-End	6.00	Apr. 1, 1988
27 Parts:		
1-199	23.00	Apr. 1, 1988
200-End	13.00	Apr. 1, 1988
28	25.00	July 1, 1988

Title	Price	Revision Date
29 Parts:		
0–99	17.00	July 1, 1988
100–499	6.50	July 1, 1988
500–899	24.00	July 1, 1988
900–1899	11.00	July 1, 1988
1900–1910	29.00	July 1, 1988
1911–1925	8.50	July 1, 1988
1926	10.00	July 1, 1988
1927–End	24.00	July 1, 1988
30 Parts:		
0–199	20.00	July 1, 1988
200–699	12.00	July 1, 1988
700–End	18.00	July 1, 1988
31 Parts:		
0–199	13.00	July 1, 1988
200–End	17.00	July 1, 1988
32 Parts:		
1–39, Vol. I	15.00	[5] July 1, 1984
1–39, Vol. II	19.00	[5] July 1, 1984
1–39, Vol. III	18.00	[5] July 1, 1984
1–189	21.00	July 1, 1988
190–399	27.00	July 1, 1988
400–629	21.00	July 1, 1988
630–699	13.00	[6] July 1, 1986
700–799	15.00	July 1, 1988
800–End	16.00	July 1, 1988
33 Parts:		
1–199	27.00	July 1, 1988
200–End	19.00	July 1, 1988
34 Parts:		
1–299	22.00	July 1, 1988
300–399	12.00	July 1, 1988
400–End	26.00	July 1, 1988
35	9.50	July 1, 1988
36 Parts:		
1–199	12.00	July 1, 1988
200–End	20.00	July 1, 1988
37	13.00	July 1, 1988
38 Parts:		
0–17	21.00	July 1, 1988
18–End	19.00	July 1, 1988
39	13.00	July 1, 1988
40 Parts:		
1–51	23.00	July 1, 1988
52	27.00	July 1, 1988
53–60	28.00	July 1, 1988
61–80	12.00	July 1, 1988
81–99	25.00	July 1, 1988
100–149	25.00	July 1,1988
150–189	24.00	July 1, 1988
190–299	24.00	July 1, 1988
300–399	8.50	July 1,1988
400–424	21.00	July 1, 1988
425–699	21.00	July 1, 1988
700–End	31.00	July 1, 1988
41 Chapters:		
1, 1–1 to 1–10	13.00	[7] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[7] July 1, 1984
3–6	14.00	[7] July 1, 1984
7	6.00	[7] July 1, 1984
8	4.50	[7] July 1, 1984
9	13.00	[7] July 1, 1984
10–17	9.50	[7] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[7] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[7] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[7] July 1, 1984
19–100	13.00	[7] July 1, 1984
1–100	10.00	July 1, 1988
101	25.00	July 1, 1988
102–200	12.00	July 1, 1988
201–End	8.50	July 1, 1988

Title	Price	Revision Date
42 Parts:		
1–60	15.00	Oct. 1, 1988
61–399	5.50	Oct. 1, 1988
400–429	21.00	Oct. 1, 1987
430–End	22.00	Oct. 1, 1988
43 Parts:		
1–999	15.00	Oct. 1, 1988
1000–3999	24.00	Oct. 1, 1987
4000–End	11.00	Oct. 1, 1988
44	20.00	Oct. 1, 1988
45 Parts:		
1–199	17.00	Oct. 1, 1988
200–499	9.00	Oct. 1, 1988
500–1199	24.00	Oct. 1, 1988
1200–End	17.00	Oct. 1, 1988
46 Parts:		
1–40	14.00	Oct. 1, 1988
41–69	14.00	Oct. 1, 1988
70–89	7.50	Oct. 1, 1988
90–139	12.00	Oct. 1, 1988
140–155	12.00	Oct. 1, 1988
156–165	13.00	Oct. 1, 1988
166–199	14.00	Oct. 1, 1988
200–499	20.00	Oct. 1, 1988
500–End	10.00	Oct. 1, 1988
47 Parts:		
0–19	18.00	Oct. 1, 1988
20–39	18.00	Oct. 1, 1988
40–69	9.00	Oct. 1, 1988
70–79	18.00	Oct. 1, 1988
80–End	19.00	Oct. 1, 1988
48 Chapters:		
1 (Parts 1–51)	26.00	Oct. 1, 1987
*1 (Parts 52–99)	18.00	Oct. 1, 1988
*2 (Parts 201–251)	18.00	Oct. 1, 1988
2 (Parts 252–299)	15.00	Oct. 1, 1987
3–6	20.00	Oct. 1, 1988
7–14	25.00	Oct. 1, 1988
15–End	26.00	Oct. 1, 1988
49 Parts:		
1–99	13.00	Oct. 1, 1988
100–177	24.00	Oct. 1, 1988
178–199	20.00	Oct. 1, 1988
200–399	17.00	Oct. 1, 1987
400–999	24.00	Oct. 1, 1988
1000–1199	18.00	Oct. 1, 1988
1200–End	18.00	Oct. 1, 1988
50 Parts:		
1–199	17.00	Oct. 1, 1988
200–599	13.00	Oct. 1, 1988
600–End	13.00	Oct. 1, 1988
CFR Index and Findings Aids	29.00	Jan. 1, 1989
Complete 1989 CFR set	620.00	1989
Microfiche CFR Edition:		
Complete set (one-time mailing)	125.00	1984
Complete set (one-time mailing)	115.00	1985
Subscription (mailed as issued)	185.00	1987
Subscription (mailed as issued)	185.00	1988
Subscription (mailed as issued)	188.00	1989

Title	Price	Revision Date
Individual copies	2.00	1989

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

CFR ISSUANCES 1989
January–April 1989 Editions and Projected July, 1989 Editions

This list sets out the CFR issuances for the January–April 1989 editions and projects the publication plans for the **July, 1989** quarter. A projected schedule that will include the **October, 1989** quarter will appear in the first **Federal Register** issue of October.

For pricing information on available 1988–1989 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1989:

Title

CFR Index

1–2 (Revised as of April 1, 1989)*

3 (Compilation)

4*

5 Parts:
1–699*
700–1199*
1200–End

6 [Reserved]

7 Parts:
0–26*
27–45
46–51*
52 (Cover only)
53–209*
210–299*
300–399
400–699*
700–899*
900–999*
1000–1059*
1060–1119*
1120–1199
1200–1499*
1500–1899
1900–1939*
1940–1949*
1950–1999*
2000–End*

8*

9 Parts:
1–199
200–End*

10 Parts:
0–50*
51–199*
200–399 (Cover only)
400–499*
500–End*

11 (Cover only)

12 Parts:
1–199
200–219*
220–299*
300–499
500–599*
600–End*

13*

14 Parts:
1–59*
60–139*
140–199
200–1199*
1200–End*

15 Parts:
0–299
300–799*
800–End*

16 Parts:
0–149
150–999
1000–End*

Titles revised as of April 1, 1989:

Title

17 Parts:
1–199*
200–239*
240–End*

18 Parts:
1–149*
150–279*
280–399*
400–End*

19 Parts:
1–199*
200–End*

20 Parts:
1–399*
400–499*
500–End*

21 Parts:
1–99*
100–169*
170–199*
200–299*
300–499*
500–599*
600–799*
800–1299*
1300–End*

22 Parts:
1–299*
300–End*

23*

24 Parts:
0–199*
200–499*
500–699*
700–1699*
1700–End*

25*

26 Parts:
1 (§§ 1.0–1–1.60)*
1 (§§ 1.61–1.169)*
1 (§§ 1.170–1.300)*
1 (§§ 1.301–1.400)*
1 (§§ 1.401–1.500)*
1 (§§ 1.501–1.640)*
1 (§§ 1.641–1.850)*
1 (§§ 1.851–1.1000)*
1 (§§ 1.1001–1.1400)*
1 (§ 1.1401–End)*
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27 Parts:
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Projected July 1, 1989 editions:

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—JULY 1989

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
July 3	July 18	August 2	August 17	September 1	October 2
July 5	July 20	August 4	August 21	September 5	October 3
July 6	July 21	August 7	August 21	September 5	October 4
July 7	July 24	August 7	August 21	September 5	October 5
July 10	July 25	August 9	August 24	September 8	October 10
July 11	July 26	August 10	August 25	September 11	October 10
July 12	July 27	August 11	August 28	September 11	October 10
July 13	July 28	August 14	August 28	September 11	October 11
July 14	July 31	August 14	August 28	September 12	October 12
July 17	August 1	August 16	August 31	September 15	October 16
July 18	August 2	August 17	September 1	September 18	October 16
July 19	August 3	August 18	September 5	September 18	October 17
July 20	August 4	August 21	September 5	September 18	October 18
July 21	August 7	August 21	September 5	September 19	October 19
July 24	August 8	August 23	September 7	September 22	October 23
July 25	August 9	August 24	September 8	September 25	October 23
July 26	August 10	August 25	September 11	September 25	October 24
July 27	August 11	August 28	September 11	September 25	October 25
July 28	August 14	August 28	September 11	September 26	October 26
July 31	August 15	August 30	September 14	September 29	October 30

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